No. 10, Original

Key to Arrangement of Papers

1 - Motion for Leave to File Bill of Complaint and Bill of Complaint

2 - Return of Defendants to Rule to Show Cause and Brief in Support of Return

3 - Motion on Behalf of the United States of America for Leave to Intervene and Brief in Support of Motion

4 - Motion on Behalf of Sidney Kartus, Successor to Fred T. Colter, Applicant for and on Behalf of the State of Arizona and Water Users under Glen-Bridge-Verde-Highline Projects, et al., ... for Leave to Intervene

5 - Complainant's Objections to Motion on Behalf of Sidney Kartus et al. for Leave to File Petition to Intervene

6 - Appendixes to the Answer

7 - Answer of Defendants to Bill of Complaint

8 - Motion of Colter Water Project Association, Incorporated, for Leave to File Brief Amicus Curiae

9 - Reply to Defendants' Answer

10 - Rejoinder of Defendants to Complainant's Reply to Defendants' Answer

11 - Petition of Intervention on Behalf of the United States of America

12 - Response of Complainant the State of Arizona to Motion of State of Nevada for Leave to Intervene

13 - Answer of Complainant State of Arizona to Petition of Intervention on Behalf of the United States of America

14 - Answer of California Defendants to Petition of Intervention on Behalf of the United States of America and Summary of the Controversy (Exhibit A)

15 - Response of California Defendants to the Motion on Behalf of the State of Nevada for Leave to Intervene and Answer of California Defendants to Petition of Intervention on Behalf of the State of Nevada.

16 - Memorandum Requesting Pre-Trial Conference

17 - Response of Arizona to Memorandum of United States of America Requesting Pre-Trial Conference

18 - Memorandum of the California Defendants in Reply to Memorandum of the United States Requesting a Pre-Trial Conference

19 - Reply of the State of Nevada to Answer of California Defendants to Petition of Intervention on Behalf of the State of Nevada

20 - Motion on Behalf of the State of Nevada for Leave to Intervene; Petition of Intervention on Behalf of the State of Nevada

21 - Memorandum of Nevada in Reply to Memorandum Requesting Pre-Trial Conference by the United States of America

22 - Answer of Complainant State of Arizona to Petition of Intervention on Behalf of the State of Nevada

23 - Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming

24 - Motion on Behalf of the California Defendants for Leave to File an Amended Answer to the Bill of Complaint of Arizona and Amendatory Answer

25 - Answer of the State of Nevada to Petition of Intervention on Behalf of the United States of America

26 - Response of Complainant State of Arizona to Defendants' Motion to Join as Parties the States of Colorado, New Mexico, Utah and Wyoming

27 - Reply of the State of Nevada to Answer of the State of Arizona to Petition of Intervention of the State of Nevada

28 - Brief of the California Defendants in Support of Their Motion to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming

29 - Appendixes to the Answer, Volume II.

30 - Brief of the State of Colorado and the State of Wyoming Opposing the Motion of the State of California to Join the States of Colorado and Wyoming as Parties to this Action

31 - Brief of the State of Utah Opposing the Motion of the California Defendants to Join the State of Utah as a Party to this Action

32 - Brief of New Mexico Opposing Motion of California to Join as Parties the States of Colorado, New Mexico, Utah and Wyoming.

33 - Brief of the State of Nevada, Intervener, in re Motion of California to Join as Parties the States of Colorado, New Mexico, Utah and Wyoming

34 - Reply Brief of the California Defendants in Support of Their Motion to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming

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IN THE

Supreme Court of the United States

October Term, 1952

No. 10 Original

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA

Defendants

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Chief Counsel,
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Assistant Counsel,
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Special Counsel,
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Attorney General of Arizona

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Chief Assistant Attorney General of Arizona

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND BILL OF COMPLAINT

IN THE

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STATE OF ARIZONA

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v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA

Defendants

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arizona, appearing by its duly authorized attorneys, respectfully moves and prays the court for leave to file the bill of complaint submitted here-

with. The State of Arizona seeks to bring this suit under authority of Article III, Section 2, Clause 2 of the Constitution of the United States.

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STATEMENT IN SUPPORT OF MOTION

By this action Arizona seeks to quiet its title to the right to the use of certain water of the Colorado River System, as against the claims of the defendants, and to obtain ancillary injunctive relief.

The respective rights of the complainant and the defendants to the use of such water exist under and are controlled by the Colorado River Compact of 1922 (Exhibit A attached to complaint submitted herewith), the Boulder Canyon Project Act (45 Stat. 1057) and the California Limitation Act (Laws of California, 1929, ch. 16, pp. 38-39). For many years the complainant and the defendants have disagreed as to the interpretation, construction, and application of the Compact and the two mentioned Acts. The contending parties assert conflicting claims to the right to use certain quantities of Colorado River System water. These claims are mutually exclusive. As to each quantity of water involved, a recognition of the Arizona claim requires a denial of the California claim and vice versa.

By act of its legislature California has limited its right to water apportioned by the Colorado River Compact to 4,400,000 acre-feet annually. This limitation was made for the benefit of Arizona, Nevada, New Mexico, Utah, Colorado, and Wyoming. Notwithstanding the limitation the defendants have made contracts for the delivery to them of 5,362,000 acre-feet annually of Colorado River water, have caused the construction of works of a capacity to divert more than 8,000,000 acre-feet annually, and are currently diverting water from the River at a rate which will result in the diversion from the Colorado River of a quantity of water greatly in excess of 4,400,000 acre-feet in 1952. In spite of the fact that it has no firm right to more than 4,400,000 acre-feet of Colorado River water annually, California asserts the right to take and threatens to take and use quantities of water greatly in excess of that amount to the injury and damage of Arizona.

Arizona needs to take and consume 3,800,000 acre-feet of Colorado River System water annually in order to

sustain its existing economy. It has ready for construction projects which will utilize such water. The successful financing, construction and operation of these projects are threatened by the claim of the defendants that Arizona has no right to such water.

Arizona and California have heretofore appeared before this Court in three cases involving rights to the use of Colorado River water. The decision in such cases and the dates when rendered are: 283 U. S. 423 (1931), 292 U. S. 341 (1934), and 298 U. S. 558 (1936). The issues presented by the complaint tendered for filing are different from the issues presented and considered in those cases. The factual situation now existing is different from that which existed at the time of the determination of each of those cases. During the period in which those cases were before the Court Arizona had not ratified the Colorado River Compact and had no contract with the United States for the use of Colorado River System water. Hence, Arizona could not then rely upon or receive any benefit from that Compact and its related documents. Now Arizona has ratified the Compact and has entered into a contract with the United States for the use of Colorado River System water. Accordingly, Arizona now relies on and asserts its rights under the Compact, the Boulder Canyon Project Act and the California Limitation Act.

California and the water users of that state are now diverting and using water from the Colorado River in quantities greatly in excess of the 4,400,000 acre-feet per annum to which it is limited by the Boulder Canyon Project Act and by the California Limitation Act. Arizona has definite projects for the use of its share of Colorado River water which it is not presently using and in furtherance thereof has initiated appropriation of water for such projects in accordance with the Statutes of Arizona.

For nearly thirty years there has been a fruitless effort to determine the controversy by compact. Because of such failure of compact negotiations, Arizona and California must look to this Court for a decision

which will define their respective rights. The prosperity and welfare of a large and important area of our Union are involved.

The case is, in essence, one involving conflicting claims of two states to the waters of an interstate stream. Under the decision in Nebraska v. Wyoming, 325 U. S. 589, 616, it is a proper case for the exercise by this Court of its original jurisdiction.

It is respectfully submitted that the motion for leave to file the complaint should be granted.

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IN THE

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October Term, 1952

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STATE OF ARIZONA,

Complainant

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

BILL OF COMPLAINT

The State of Arizona, by leave of Court, files this bill of complaint and respectfully says:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States.

II

In this behalf the complainant acts by and through the Arizona Interstate Stream Commission, an official state agency charged by statute with the duty and responsibility of prosecuting and defending all rights,

claims and privileges of the state with respect to interstate streams, and by and through the Attorney General of the State of Arizona.

III

The defendants, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District and Metropolitan Water District of Southern California are political subdivisions and agencies of the State of California, duly organized and existing under the laws of that State. The defendants City of Los Angeles and City of San Diego are municipal corporations duly organized and existing under the laws of the State of California. The defendant County of San Diego is a county duly created and existing under the laws of the State of California.

IV

(a) The Colorado River is a navigable stream with a total length of 1293 miles. It rises in the State of Colorado and flows through that State and Utah before entering Arizona near its northeast corner. The Colorado River flows for 292 miles through Arizona. Then for 145 miles it forms the boundary between Arizona and Nevada, for 235 miles the boundary between Arizona and California, and for 16 miles the boundary between Arizona and Mexico. For 688 miles, or more than one-half its length the Colorado River flows in Arizona or upon its boundary.

(b) The natural drainage basin of the Colorado River in the United States is divided among the States as follows:

Arizona	103,000 square miles,
California	4,000 square miles,
Nevada	12,000 square miles,
Utah	40,000 square miles,
New Mexico	23,000 square miles,
Colorado	39,000 square miles,
Wyoming	19,000 square miles.

Approximately 43% of the natural drainage basin of the Colorado River lies within Arizona. Approximately 90% of the total area of Arizona is within said natural drainage basin.

(c) The tributaries of the Colorado River have a total combined length of approximately 2164 miles of which 836 miles are in Arizona. No tributaries enter the Colorado River from California. California does not contribute any appreciable or measurable quantity of water to the River.

V

In the early years of the present century controversies arose among the seven Colorado River Basin States over the use of the waters of that river. Pursuant to appropriate Federal and State authorizations an interstate compact, known as The Colorado River Compact and hereinafter referred to as Compact, governing the use of the waters of the Colorado River, was negotiated, signed on November 24, 1922, ratified by the States, and consented to by the Congress of the United States. By virtue of the Boulder Canyon Project Act (December 21, 1928, 45 Stat. 1057), the compliance by California with the terms and provisions of that Act, and the ratification of the Compact by six states, it became effective as to all basin States except Arizona on June 25, 1929. Arizona ratified the Compact on February 24, 1944 (Arizona Laws, 1944, p.37). The Compact is now and for many years has been in full force and effect. A copy of the Compact is attached hereto, marked Exhibit A, and by this reference made a part hereof.

VI

Article II of the Compact contains the following definition of terms hereinafter used:

"As used in this compact:

(a) The term "Colorado River System" means that

portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River 1 mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power."

VII

The Compact did not apportion water of the Colorado River System among the signatory States. Instead, it

apportioned the beneficial consumptive use of stated quantities of water to the Upper Basin and the Lower Basin respectively. Such apportionment is made by Article III of the Compact. The pertinent provisions of that Article are these:

"(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If . . . the United States . . . shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, . . .

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series. . . .

. . . .

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b)."

VIII

After the Colorado River Compact was signed by representatives of the States and approved by the Federal representative on November 24, 1922, the defendant, the State of California, pressed strenuously for the ratification of the Compact by the respective State legislatures and the grant of the needed consent of the Congress of the United States. Arizona objected to the Compact and to the grant of Congressional consent because it deemed that the Compact adversely affected its rights unless it were protected by some determination of the quantum of water from the Colorado River System available under the Compact for use in Arizona and by some limitation on the quantum of such water available for use in California. California was desirous of securing the construction of a dam at Black or Boulder Canyon of the Colorado River to protect against floods, regulate stream flows, and generate hydroelectric power and of securing the construction of a canal which would be located entirely in the United States and which would carry water from the Colorado River to the Imperial Valley of California.

IX

(a) By the Boulder Canyon Project Act (Act of December 21, 1928, 45 Stat. 1057), hereinafter referred to as Project Act, Congress authorized the construction of a dam in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir with a capacity of at least twenty million acre-feet and the construction of the All-American Canal from the River to the Imperial and Coachella Valleys of California.

(b) Section 4(a) of that Act provides thus:

"This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no

water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall

provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada."

(c) Section 13 (a) of the Project Act gives the required consent of Congress to the Compact upon the satisfaction of the conditions set out in Section 4 (a).

(d) By Section 8 and Section 13 (b), (c), and (d), the United States subjects all of its rights, and the rights of those claiming under it, to the provisions of the Compact.

(e) Section 13 (c) of the Project Act reads thus:

"(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this act, the Federal water power act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact."

X

(a) In order to comply with the conditions precedent established by Section 4 (a) of the Project Act, California duly enacted a law hereinafter referred to as the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess; Statutes and Amendments to the Codes, 1929, pp. 38-39) which reads as follows:

"An Act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the "Boulder Canyon Project Act," approved December 21, 1928, in the event the Colorado River Compact is not approved by all of the states signatory thereto.

The people of the State of California do enact as follows:

Section 1. In the event the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, and approved by and set out at length in that certain

act entitled "An Act to ratify and approve the Colorado River Compact, signed at Santa Fe, New Mexico, November 24, 1922, to repeal conflicting acts and resolutions and directing that notice be given by the governor of such ratifications and approval," approved January 10, 1929 (statutes 1929, chapter 1), is not approved within six months from the date of the passage of that certain act of the Congress of the United States known as the "Boulder Canyon Project Act," approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado River Compact, then when six of said states, including California, shall have ratified and approved said Compact, and shall have consented to waive the provisions of the first paragraph of article eleven of said compact which makes the same binding and obligatory when approved by each of the states signatory thereto, and shall have approved said Compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said "Boulder Canyon Project Act," the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming as an express covenant and in consideration of the passage of the said "Boulder Canyon Project Act" that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California including all uses under contracts made under the provisions of said "Boulder Canyon Project Act," and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph "a" of article three of the said Colorado River Compact, plus not more

than one-half of any excess or surplus waters unapportioned by said Compact, such uses always to be subject to the terms of said Compact.

Sec. 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4 (a) of the said "Boulder Canyon Project Act" and this act shall be so construed."

(b) After the passage of the California Limitation Act and the ratification of the Compact by six of the Basin States, the Compact was proclaimed effective as of June 25, 1929.

XI

(a) After the Compact became effective the Secretary of the Interior promulgated general regulations under which the United States would contract for the disposition of Colorado River water. During the period 1930-1934 the Secretary of the Interior negotiated and entered into water contracts with the Palo Verde Irrigation District, the Imperial Irrigation District, the Coachella Valley County Water District, the Metropolitan Water District of Southern California, the City of San Diego, and the County of San Diego, all defendants herein.

(b) The quantities of Colorado River water which the contracting defendants were entitled to receive under such contracts were attempted to be determined by the California Seven Party Water Agreement of August 18, 1931. A copy of such agreement, marked Exhibit B, is attached hereto, and by this reference made a part thereof. The Seven Party Water Agreement was made and executed by all of the defendants except the State of California and has been acquiesced in and accepted by the State of California. It purports to allocate the California share of the waters of the Colorado River. The quantity of water so attempted to be allocated amounts to 5,362,000 acre-feet per annum. In so far as said agreement attempts to apportion among

the California water users any rights to the consumptive use of water in excess of 4,400,000 acre-feet per annum it was and is without any force, effect, or validity whatsoever.

(c) Paragraph 16 of the contract of December 1, 1932, between the United States and Imperial Irrigation District, provides in its Article 29 that:

> "This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress, approved August 19, 1921, entitled 'An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes' which compact was approved by the Boulder Canyon Project Act."

Substantially identical provisions are contained in the agreements between the other defendants and the United States. Said contracts are expressly subjected to the availability of water for use in California under the Compact and the Project Act.

(d) The contracts between the United States and the defendant California entities above mentioned wrongfully and unlawfully purport to recognize a right in California and its water users to take, divert, use, and consume a total of 5,362,000 acre-feet of Colorado River water annually. By the express terms of the Project Act and the California Limitation Act such right is limited to the use of 4,400,000 acre-feet annually of the water apportioned by Article III (a) of the Compact "plus not more than one-half of any excess or surplus water unapportioned by said compact, such uses always to be subject to the terms of said compact." Under the Compact, Article III (f), surplus waters may not be apportioned until after October 1, 1963.

XII

(a) After the execution of the contracts above mentioned the dam, now known as Hoover Dam, was built by the United States Bureau of Reclamation in the Black Canyon of the Colorado River to a size which will impound approximately 32,000,000 acre-feet of water. The Imperial Dam and the All-American Canal were built to take water from the Colorado River to the Imperial and Coachella Valleys of California. The All-American Canal has a capacity of 15,155 cubic feet of water per second of time, hereinafter referred to as c.f.s., from its point of diversion to Syphon Drop, 13,155 c.f.s., from there to Pilot Knob, and 10,155 c.f.s. beyond Pilot Knob. The United States pursuant to a contract between it and defendant Metropolitan Water District of Southern California constructed Parker Dam. Thereafter, the Metropolitan Aqueduct was constructed to carry Colorado River water to various Southern California communities. The Metropolitan Aqueduct has a designed capacity of 1,605 c.f.s. The United States Bureau of Reclamation constructed Davis Dam to re-regulate water released from Hoover Dam.

(b) All of the aforementioned facilities were constructed and are operated for the storage, diversion, and use of Colorado River water within the Lower Basin of that river and are governed by, and must be maintained, operated and administered in conformity with the Compact, the Project Act, and the California Limitation Act.

(c) Through the operation of such facilities, California and its water users can take, divert, and consumptively use quantities of Colorado River water greatly in excess of 4,400,000 acre-feet. The defendants and each of them claim that California and its water users have the right to take, divert, and consumptively use, by means of such facilities a minimum of 5,362,000 acre-feet of Colorado River water each year. Such claim and claims are contrary to the Compact, the

Project Act, and the California Limitation Act and are void and without effect as against the rights of the complainant.

XIII

(a) Arizona ratified the Compact on February 24, 1944, and at the same time entered into a contract with the United States for the annual delivery to Arizona and its water users from storage in Lake Mead of "so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet" subject to the availability of such water under the Compact and the Project Act. This delivery obligation applies and is intended to apply only to water from the main stream of the Colorado River. It does not apply to or affect the use of any water of the Gila River or its tributaries. The delivery obligation is subject to certain adjustments which are specifically mentioned in the contract. The United States also agrees to deliver to Arizona from Lake Mead storage one-half of the unapportioned surplus, subject to the availability thereof to Arizona under the Compact and subject to whatever rights Nevada, New Mexico, and Utah may be determined to have therein. A copy of the aforementioned contract, marked Exhibit C, is attached hereto and by this reference made a part hereof. The rights of Arizona to water from the Colorado River System are made subject to, and controlled by, the Compact and the Project Act.

(b) In ratifying the Compact as above set forth, Arizona acted in reliance upon the California Limitation Act and the provisions of Section 4 (a) of the Project Act. Arizona would not have ratified the compact had it not been for the protection which was and is provided to it by the California Limitation Act.

XIV

By contracts dated March 30, 1942 and January 3, 1944, the United States agreed to deliver annually to

Nevada from Lake Mead storage "so much water, including all other water diverted for use within the State of Nevada in the Colorado River System, as may be necessary to supply the State a total quantity not to exceed" 300,000 acre-feet, subject to the availability of such water under the Compact and the Project Act. The quantity of water to which Nevada is entitled under said contracts is the same as that specifically stated for Nevada in Section IV(a) of the Project Act.

XV

Portions of the States of New Mexico and Utah are located within the Lower Basin of the Colorado River. As stated in Paragraph 7 (g) of its February, 1944 contract with the United States, Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such Compact. Arizona expects to negotiate with New Mexico and Utah a compact which will define the respective rights of those states to participate as Lower Basin States in the use of Colorado River water apportioned now or hereafter to such Lower Basin. There is no controversy between Arizona and either New Mexico or Utah over their respective rights to the use of Colorado River water.

XVI

By treaty between the United States and the United States of Mexico, signed February 3, 1944 and proclaimed effective November 27, 1945 (Treaty Series 994), there is allotted to Mexico an annual quantity of 1,500,000 acre-feet of Colorado River water to be delivered in a specified manner and subject to reduction in periods of extraordinary drought. To an extent which is not as yet determined much of the Mexico allotment of water will be satisfied by return flows accruing to the Colorado River at a point too far down stream to permit the rediversion and use of such flows in the

United States. It is uncertain whether excess or surplus flows of the Colorado River unapportioned by the Compact will be adequate to satisfy the allotment of water to Mexico.

XVII

(a) Subject to the availability of water under the Compact and the Project Act and subject to the rights of the States of New Mexico and Utah, Arizona has the right to take and divert from the Colorado River System annually so much water as may be necessary for the beneficial consumptive use in Arizona of 3,800,000 acre-feet. Such quantity is made up of 2,800,000 acre-feet out of the 7,500,000 acre-feet apportioned to the Lower Basin by Article III (a) of the Compact plus the 1,000,000 acre-feet apportioned by Article III (b) of the Compact.

(b) Arizona is not now presently using all of the aforesaid 3,800,000 acre-feet of water to which it is entitled annually. In excess of 1,700,000 acre-feet out of the said 3,800,000 acre-feet is not being presently used and consumed in Arizona, and is available for such use and consumption under the Arizona Projects hereinafter mentioned.

XVIII

There are within the natural basin of the Colorado River System in Arizona certain Indians and Indian tribes. Article VII of the Compact provides that it shall not be construed as affecting the obligations of the United States to Indian tribes. There is no controversy which relates to the use of the waters of the Colorado River System by Indians or Indian tribes and which involves the complainant.

XIX

Arizona is an arid state. Irrigation is essential to its successful agriculture, and much water is needed for

domestic, municipal and industrial purposes. Precipitation is insufficient to satisfy the need for water. Arizona has no substantial source of water except the Colorado River System. There are in Arizona in excess of 725,000 acres of land presently irrigated with surface and underground water which need additional and supplemental water in order to sustain their productivity. Such additional and supplemental water can be obtained only from the main stream of the Colorado River. The underground water supply, tapped by wells for irrigation of a substantial portion of said acreage, is grievously depleted because the draft thereon is greatly in excess of the recharge. As a result the well depths are increasing and the well discharges are decreasing. Because of such diminution of the underground water supply there is now available in Arizona water sufficient to irrigate and cultivate approximately 500,000 acres of land only. Arizona desperately needs additional water from the main stream of the Colorado River. Without such additional water, approximately 31% of the 725,000 acres of land presently cultivated will go out of cultivation. Agricultural production will be reduced to a dangerous extent, population will decline, and the economy of the State will be destroyed in large measure. The only source of water to prevent such a catastrophe is the main stream of the Colorado River.

XX

At the request of Arizona, the United States Bureau of Reclamation has investigated a project to bring water to Central Arizona from the main stream of the Colorado River. Such project is known as the Central Arizona Project. Plans for such project are substantially as set out in House Document 136, 81st Congress. During the 79th and succeeding Congresses Arizona has endeavored to obtain Congressional authorization for the construction of the Central Arizona Project by the Bureau of Reclamation. The defendants have vigorously resisted such legislation upon the ground, among others, that there is no water from the Colorado River

System available for consumptive use in Arizona in addition to the quantities of such water now used. Bills to authorize the Central Arizona Project were passed by the United States Senate in the 81st and 82nd Congresses but failed of passage in the House of Representatives. On April 18, 1951 the House of Representatives Committee on Interior and Insular Affairs adopted a resolution that consideration of the bills relating to the Central Arizona Project "be postponed until such time as use of water in the lower Colorado River Basin is either adjudicated or binding or mutual agreement as to the use of the water is reached by the States of the lower Colorado River basin" (see Hearings Before the Committee on Interior and Insular Affairs, House of Representatives, 82nd Congress, First Session, on H. R. 1500 and H. R. 1501, Part 2, pp. 739-761). Such Congressional action has been due to the wrongful assertion by the defendants of unwarranted and unlawful claims to the use of water of the Colorado River System. Unless and until the title of Arizona to the beneficial consumptive use annually of 3,800,000 acre-feet of water (subject to the rights of New Mexico and Utah) of the Colorado River System is confirmed and put at rest by decree of this court, the defendants will continue, improperly, unfairly and wrongfully to impugn such title of Arizona with the intent of preventing Arizona from using any additional water from the main stream of the Colorado River.

XXI

(a) Arizona has present projects for the beneficial consumptive use of waters from the Colorado River System to which it is entitled but which it is not now using. One of such projects is substantially the same as the Central Arizona Project above referred to. Arizona proposes to construct the Granite Reef Aqueduct and other appurtenant features of the Central Arizona Project, and in furtherance of such plans, has applied to the Secretary of the Interior for a right of way over the public domain for said Granite Reef Aqueduct.

Such right of way was granted by the Secretary of the Interior to the State of Arizona on the 18th day of July, 1952.

(b) Arizona has also applied for and been granted the necessary right of way over lands owned by the State of Arizona for Granite Reef Aqueduct. In addition thereto, Arizona is negotiating to purchase rights of way over privately owned lands and is proceeding to condemn additional rights of way over privately owned land. When such proceedings are completed, Arizona will have a right of way for the entire course of the Granite Reef Aqueduct.

(c) Various agencies and subdivisions of the State of Arizona have heretofore made application to appropriate sufficient water from the main stream of the Colorado River to the Central Arizona Project and said applications have been granted by the State Land Commissioner, the state official designated by statute for such purpose.

(d) Arizona intends to and will proceed with the construction of Granite Reef Aqueduct. The necessary diversion works, aqueducts, and power plants will cost several hundred million dollars. The improper and wrongful claims of the defendants to the waters of the Colorado River System prevent Arizona from financing the construction of its project and unless the rights of Arizona are confirmed, quieted, and put at rest by a decree herein the charges and interest which Arizona will have to pay to secure the necessary financing will be substantially increased.

(e) In order to obtain the power necessary to pump water into Granite Reef Aqueduct from Lake Havasu on the Colorado River, Arizona has heretofore negotiated with the Secretary of the Interior relative to Bridge Canyon Dam, plans for which are set forth in House Document 136, 81st Congress. The Secretary of the Interior has heretofore advised Arizona that when funds are provided by Arizona or an agency or subdivision thereof, the Department of the Interior, as permitted by the Reclamation laws, will take all necessary

steps to ascertain if Bridge Canyon Dam and related facilities can be constructed, and, if found authorized, construction thereof will be undertaken in accordance with the plans set forth in said House Document 136. The energy required to pump water from Lake Havasu to the Granite Reef Aqueduct and from thence to the places of use in Arizona will be received from hydroelectric power generated at Bridge Canyon Dam or from some other hydroelectric power plants, or, if no hydroelectric power is available, then from a plant or plants generating electricity by the use of steam.

(f) Arizona has spent to date approximately $400,000.00 in the study, investigation and planning of the diversion of waters from the main stream of the Colorado River into Central Arizona. For the same purpose, the United States Bureau of Reclamation has expended approximately $750,000.00.

XXII

A controversy exists between the plaintiff and the defendants as to the interpretation, construction and application of the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act. Such controversy relates to the following:

(1) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water? The complainant says that it is apportioned water and hence the Project Act and the California Limitation Act, which limits California's rights to 4,400,000 acre-feet annually of water apportioned by Article III (a) plus not more than one-half of the surplus unapportioned by that Compact, preclude California from any rights to water covered by Article III (b). Complainant further says that its position in this regard is sustained by the decision of this Court in the case of *Arizona v. California,* 292 U. S. 341.

(2) How is beneficial consumptive use to be measured? Article III of the Compact does not apportion

water. Rather it apportions the beneficial consumptive use of water. The Compact contains no definition of beneficial consumptive use and does not establish any method of measuring beneficial consumptive use. Arizona says that beneficial consumptive use is measured in terms of main stream depletion, that is, the quantity of water which constitutes the depletion of the stream by the activities of man. Water salvaged by man is not chargeable as a beneficial consumptive use. The point is most pertinent when applied to the use of waters of the Gila River, a tributary of the Colorado River. In a state of nature the Gila River was a losing stream with large quantities of water lost to the stream before its confluence with the Colorado River. Arizona has salvaged this water by putting it to beneficial consumptive use before it is lost and is chargeable only with the depletion of the stream at the state line. The amount of water involved in the controversy over the method of measurement of beneficial consumptive use exceeds 1,000,000 acre-feet annually.

(3) How are evaporation losses from Lower Basin main stream storage reservoirs to be charged? Such reservoir losses amount to over 700,000 acre-feet of water annually. Arizona says that such losses of water should be apportioned among the users of water from the main stream storage reservoirs in the Lower Basin in the same proportion as the consumptive use of each is to the total consumptive use of such storage water in the Lower Basin.

XXIII

There are or may be claims asserted by the defendants or some one or more of them, in addition to those relating to the controversial subjects stated in Paragraph XXII above, which adversely affect or may adversely affect the right of Arizona to the beneficial consumptive use of 3,800,000 acre-feet of water of the Colorado River System, all of which claims, including both

those relating to those questions stated in Paragraph XXII and those which the defendants may assert in addition thereto, are or may be in derogation of the title of the plaintiff in and to the beneficial consumptive use of 3,800,000 acre-feet of water annually from the Colorado River System. Such claims so adverse to the plaintiff are each and all in violation of the Compact, the Project Act, and the California Limitation Act and are wholly without force, effect or validity. The right and title of Arizona to the beneficial consumptive use of 3,800,000 acre-feet of water of the Colorado River System (except such quantities thereof as New Mexico and Utah are entitled to) is good and valid and is subject to no diminution by reason of any claims of the defendants whatsoever. Unless and until such right and title of Arizona is confirmed by this Court neither the Project heretofore mentioned nor any other Project to utilize desperately needed main stream Colorado River water in Arizona can be financed or constructed.

XXIV

Under the authority of the Compact, the Project Act and the California Limitation Act, Hoover, Davis, Parker and Imperial Dams, the Metropolitan Aqueduct, and the All-American Canal have been constructed. The defendants have used and profited from such facilities. None of such facilities would have been constructed had it not been for the Compact, the Project Act and the California Limitation Act. The defendants have accepted over a period of many years benefits consisting of many millions of acre-feet of water for beneficial consumptive use and of many billions of kilowatt hours of hydroelectric energy and they and each of them are now estopped and forever precluded from denying the validity and integrity of the Compact, the Project Act and the California Limitation Act.

XXV

In the second paragraph of Section 4 (a) of the Project Act the Congress of the United States stated

what it deemed to be a fair apportionment among California, Arizona, and Nevada of the beneficial consumptive use of water apportioned to the Lower Basin by the Compact. Such an apportionment was and is fair and equitable. Arizona accepts it and will be bound thereby. California after having secured, by virtue of the Compact, the Project Act, and the California Limitation Act, the facilities which it desires is now unwilling to accept such an apportionment. California passed its Limitation Act and accepted the aforesaid benefits accruing to it and its water users by reason of the construction of the facilities above mentioned with full knowledge that the Congress of the United States had given its approval to the aforesaid apportionment. The defendants, and each and all of them, are now estopped and forever precluded from claiming that the apportionment so approved by the Congress of the United States is not a fair and equitable apportionment among the States of California, Arizona, and Nevada.

XXVI

Facilities now constructed and in use to divert water from the Colorado River System for use in California have a capacity to take annual quantities exceeding 8,000,000 acre-feet. During the years 1946 to 1951 inclusive the defendants, through the use of such facilities, diverted water from the Colorado River System for use in California in the following quantities:

1946	3,381,000 acre-feet
1947	3,392,000 acre-feet
1948	3,714,000 acre-feet
1949	3,944,000 acre-feet
1950	4,229,000 acre-feet
1951	4,540,000 acre-feet

In the year 1952, according to estimates by the Bureau of Reclamation, based on requests made by defendant California users, the defendants, if they continue to divert water from the Colorado River System at the rate diversions have been made during the calen-

dar year to date, will divert at least 5,430,000 acre-feet. Defendants and each of them have threatened for many years to use and consume, and are now actually using and consuming, quantities of Colorado River water in excess of 4,400,000 acre-feet annually. Defendants will in the future, unless restrained and enjoined by this Court, continue to increase their diversions of Colorado River water. Defendants have no firm right to divert and take annual quantities of Colorado River water in excess of 4,400,000 acre-feet, and their use of such quantities of water in derogation of the rights of Arizona should be enjoined and forever restrained.

XXVII

The controversy between the complainant and the defendants as to their respective rights to the use of waters of the Colorado River System is a controversy of serious magnitude. The basic economy of the State of Arizona is threatened with destruction by reason of the matters and things complained of herein. The injury and resulting damage to Arizona and its people by reason of the actions, threats and claims of the defendants are so great that they are incapable of estimation.

XXVIII

The defendant, the State of California, has long recognized that a controversy of grave import and serious magnitude exists between it and the State of Arizona over the use of the waters of the Colorado River System. This has been established by testimony presented to Congressional committees by official representatives of California in hearings before the 79th, 80th, 81st and 82nd Congresses, by official actions of the Governor of California, and by resolutions adopted by the legislature of California.

XXIX

Arizona has no plain, speedy or adequate remedy at law and has no remedy whatsoever in any other court.

WHEREFORE, complainant, the State of Arizona, prays that:

1. Its title to the annual beneficial consumptive use of 3,800,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact be forever confirmed and quieted, subject only to the rights of the States of Utah and New Mexico and to the availability of such water under the Colorado River Compact.

2. The title of the State of California to the annual beneficial consumptive use of the waters of the Colorado River System apportioned to the Lower Basin by the Colorado River Compact be fixed at and forever limited to 4,400,000 acre-feet and be made subject to the availability of such water under the Colorado River Compact.

3. The defendants and each and all of them and the attorneys, engineers, officers, representatives, and agents of them and each of them be forever enjoined and restrained from asserting against the plaintiff in any manner any claim to the waters of the Colorado River System which interferes or conflicts with the right of the complainant to the annual beneficial consumptive use of 3,800,000 acre-feet of the waters of the Colorado River System apportioned to the Lower Basin by the Colorado River Compact, subject only to the rights of the States of Utah and New Mexico and subject to the availability of such water under the Colorado River Compact.

4. As to surplus waters of the Colorado River System unapportioned by the Colorado River Compact, it be decreed that when and if such waters or any thereof are apportioned to the Lower Basin, the State of California shall be entitled to one-half thereof and the State of Arizona to the remainder less a quantity not to exceed one-twenty-fifth of the total to the State of Nevada and less whatever rights Utah and New Mexico may have in and to such surplus.

5. A decree be entered herein recognizing, confirm-

ing and establishing that the beneficial consumptive use of water apportioned by the Colorado River Compact be measured in terms of stream depletion.

6. Losses of water in and from reservoirs located in the Lower Basin on the main stream of the Colorado River shall be charged against the apportionment to Arizona and California respectively in the same proportion as the consumptive use of water in the State against which the charge is made currently bears to the total consumptive use of water in the Lower Basin.

7. The complainant have such other and further relief as the court may deem proper.

8. The complainant have judgment for its costs herein expended.

JOHN H. MOEUR
Chief Counsel
Arizona Interstate Stream Commission

BURR SUTTER
Assistant Counsel
Arizona Interstate Stream Commission

PERRY M. LING
Special Counsel
Arizona Interstate Stream Commission

FRED O. WILSON
Attorney General of Arizona

ALEXANDER B. BAKER
Chief Assistant Attorney General of Arizona.

Attorneys for the State of Arizona

STATE OF ARIZONA
County of Maricopa } ss.

HOWARD PYLE, being first duly sworn, upon his oath deposes and says: That he is the duly elected, qualified and acting Governor of the State of Arizona; that he has read the foregoing Bill of Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters alleged therein on information and belief, and as to those he believes it to be true.

HOWARD PYLE

Subscribed and sworn to before me this 8th day of August, 1952.

WESLEY BOLIN
Secretary of State,
State of Arizona

EXHIBIT A.

COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171) and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel for the State of Arizona
W. F. McClure for the State of California
Delph E. Carpenter for the State of Colorado
J. G. Scrugham for the State of Nevada
Stephen B. Davis, Jr., for the State of New Mexico
R. E. Caldwell for the State of Utah
Frank C. Emerson for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such water shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any

time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures

of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

DONE at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-two.

(Signed) W. S. NORVIEL
(Signed) W. F. MCCLURE.
(Signed) DELPH E. CARPENTER.
(Signed) J. G. SCRUGHAM.
(Signed) STEPHEN B. DAVIS, JR.
(Signed) R. E. CALDWELL.
(Signed) FRANK C. EMERSON.

Approved:
(Signed) HERBERT HOOVER.

EXHIBIT B

AGREEMENT

REQUESTING THE DIVISION OF WATER RESOURCES OF THE STATE OF CALIFORNIA TO APPORTION CALIFORNIA'S SHARE OF THE WATERS OF THE COLORADO RIVER AMONG THE VARIOUS APPLICANTS AND WATER USERS THEREFROM IN THE STATE, CONSENTING TO SUCH APPORTIONMENTS, AND REQUESTING SIMILAR APPORTIONMENTS, AND REQUESTING SIMILAR APPORTIONMENTS BY THE SECRETARY OF THE INTERIOR OF THE UNITED STATES

This agreement, made the 18th day of August 1931, by and between Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego.

Witnesseth:

Whereas the Secretary of the Interior did, on November 5, 1930 request of the Division of Water Resources of California a recommendation of the proper apportionments of the water of and from the Colorado River to which California may be entitled under the provisions of the Colorado River compact, the Boulder Canyon project act, and other applicable legislation and regulations to the end that the same could be carried into each and all of the contracts between the United States and applicants for water contracts in California as a uniform clause; and

Whereas the parties hereto have fully considered their respective rights and requirements in cooperation with the other water users and applicants and the Division of Water Resources aforesaid;

Now, therefore, the parties hereto do expressly agree to the apportionments and priorities of water of and from the Colorado River for use in California as hereinafter fully set out and respectfully request the Division of Water Resources to, in all respects, recognize said

apportionments and priorities in all matters relating to State authority and to recommend the provisions of Article I hereof to the Secretary of the Interior of the United States for insertion in any and all contracts for water made by him pursuant to the terms of the Boulder Canyon project act, and agree that in every water contract which any party may hereafter enter into with the United States, provisions in accordance with Article I shall be included therein if agreeable to the United States.

ARTICLE I

The waters of the Colorado River available for use within the State of California under the Colorado River compact and the Boulder Canyon project act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

SECTION 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said district as it now exists and upon lands between said district and the Colorado River, aggregating (within and without said district) a gross area of 104,500 acres, such waters as may be required by said lands.

SEC. 2. A second priority to Yuma project of the United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

SEC. 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District for beneficial consumptive use, 3,850,000 acre-feet of water per annum, less the beneficial consumptive use under the priorities designated in sections 1 and 2 above. The rights designated

(a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

SEC. 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre-feet of water per annum.

SEC. 5. A fifth priority (a) to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

SEC. 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

SEC. 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on map No. 23000 of the Department of the Interior, Bureau of Reclamation.

SEC. 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said district and/or said city (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of re-

duced diversions by said district and/or said city; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said district and/or said city and such users resulting therefrom.

SEC. 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said city and/or said county (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said city and/or said county; provided, that accumulations shall be subject to such conditions as to accumulations, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said city and/or said county and such users resulting therefrom.

SEC. 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said district and said city, and either or both may use said apportionments as may be agreed by and between said district and said city.

SEC. 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclus-

ion of a supply for both said city and said county and either or both may use said apportionments as may be agreed by and between said city and said county.

SEC. 12. The priorities hereinbefore set forth shall be in nowise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

ARTICLE II

That each and every party hereto who has heretofore filed an application or applications for a permit or permits to appropriate water from the Colorado River requests the Division of Water Resources to amend such application or applications as far as possible to bring it or them into conformity with the provisions of this agreement; and each and every party hereto who has heretofore filed a protest or protests against any such application or applications of other parties hereto does hereby request withdrawal of such protest or protests against such application or applications when so amended.

ARTICLE III

That each and all of the parties to this agreement respectfully request that the contract for delivery of water between the United States of America and the Metropolitan Water District of Southern California under date of April 24, 1930, be amended in conformity with Article I hereof.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized, the day and year first above written. Executed in seven originals.

Recommended for execution:

PALO VERDE IRRIGATION DISTRICT,
By ED. J. WILLIAMS.
ARVIN B. SHAW, JR.

IMPERIAL IRRIGATION DISTRICT,
By CHAS. L. CHILDERS.
M. J. DOWD.

COACHELLA VALLEY COUNTY WATER DISTRICT,
By THOS. C. YAGER.
ROBBINS RUSSEL.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
By W. B. MATTHEWS.
C. C. ELDER.

CITY OF LOS ANGELES,
By W. W. HURLBUT.
C. A. DAVIS.

CITY OF SAN DIEGO,
By C. L. BYERS.
H. N. SAVAGE.

COUNTY OF SAN DIEGO,
By H. N. SAVAGE.
C. L. BYERS.

(The agreement was thereafter ratified by each of the seven parties.)

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

ARIZONA-CALIFORNIA-NEVADA
CONTRACT FOR DELIVERY OF WATER

THIS CONTRACT made this 9th day of February 1944 pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplemental thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States," acting for this purpose by Harold L. Ickes, Secretary of the Interior, hereinafter referred to as the "Secretary," and the STATE OF ARIZONA, hereinafter referred to as "Arizona," acting for this purpose by the Colorado River Commission of Arizona, pursuant to Chapter 46 of the 1939 Session Laws of Arizona,

Witnesseth that:

EXPLANATORY RECITALS

2. Whereas for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary acting under and in pursuance of the provisions of the Colorado River Compact and Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Boulder Dam and

incidental works, creating thereby a reservoir designated Lake Mead of a capacity of about thirty-two million (32,000,000) acre-feet; and

3. Whereas said Boulder Canyon Project Act provides that the Secretary, under such general rules and regulations as he may prescribe, may contract for the storage of water in the reservoir created by Boulder Dam, and for the delivery of such water at such points on the river as may be agreed upon, for irrigation and domestic uses, and provides further that no person shall have or be entitled to have the use for any purpose of the water stored, as aforesaid, except by contract made as stated in said Act; and

4. Whereas it is the desire of the parties to this contract to contract for the storage of water and the delivery thereof for irrigation of lands and domestic uses within Arizona; and

5. Whereas nothing in this contract shall be construed as affecting the obligations of the United States to Indian tribes:

6. Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit

DELIVERY OF WATER

7. (a) Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet.

(b) The United States also shall deliver from storage in Lake Mead for use in Arizona, at a point or points of diversion on the Colorado River approved by the Secretary, for the uses set forth in subdivision

(a) of this Article, one-half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under said compact and said act, less such excess or surplus water unapportioned by said compact as may be used in Nevada, New Mexico, and Utah in accordance with the rights of said states as stated in subdivisions (f) and (g) of this Article.

(c) This contract is subject to the condition that Boulder Dam and Lake Mead shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the United States and Arizona, and agencies and water users therein, shall observe and be subject to and controlled by said Colorado River Compact and the Boulder Canyon Project Act in the construction, management, and operation of Boulder Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other uses.

(d) The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.

(e) This contract is for permanent service, subject to the conditions stated in subdivision (c) of this Article, but as to the one-half of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) of Article III of the Colorado River Compact, such water is subject to further equitable

apportionment at any time after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(f) Arizona recognizes the right of the United States and the State of Nevada to contract for the delivery from storage in Lake Mead for annual beneficial consumptive use within Nevada for agricultural and domestic uses of 300,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact, and in addition thereto to make contract for like use of 1/25 (one twenty-fifth) of any excess or surplus waters available in the Lower Basin and unapportioned by the Colorado River Compact, which waters are subject to further equitable apportionment after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(g) Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such compact, and nothing contained in this contract shall prejudice such rights.

(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies.

(i) Nothing in this contract shall preclude the parties hereto from contracting for storage and delivery above Lake Mead of water herein contracted for, when and if authorized by law.

(j) As far as reasonable diligence will permit, the water provided for in this contract shall be delivered as ordered and as reasonably required for domestic and

irrigation uses within Arizona. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered, for the purpose of investigation and inspection, maintenance, repairs, replacements, or installation of equipment or machinery at Boulder Dam, or other dams heretofore or hereafter to be constructed, but so far as feasible will give reasonable notice in advance of such temporary discontinuance or reduction.

(k) The United States, its officers, agents, and employees shall not be liable for damages when for any reason whatsoever suspensions or reductions in the delivery of water occur.

(l) Deliveries of water hereunder shall be made for use within Arizona to such individuals, irrigation districts, corporations or political subdivisions therein of Arizona as may contract therefor with the Secretary, and as may qualify under the Reclamation Law or other federal statutes or to lands of the United States within Arizona. All consumptive uses of water by users in Arizona, of water diverted from Lake Mead or from the main stream of the Colorado River below Boulder Dam, whether made under this contract or not, shall be deemed, when made, a discharge pro tanto of the obligation of this contract. Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this contract.

(m) Rights-of-way across public lands necessary or convenient for canals to facilitate the full utilization in Arizona of the water herein agreed to be delivered will be granted by the Secretary subject to applicable federal statutes.

POINTS OF DIVERSION: MEASUREMENTS OF WATER

8. The water to be delivered under this contract shall be measured at the points of diversion, or elsewhere as the Secretary may designate (with suitable adjustment for losses between said points of diversion and measurement), by measuring and controlling devices or automatic gauges approved by the Secretary, which devices, however, shall be furnished, installed, and main-

tained by Arizona, or the users of water therein, in manner satisfactory to the Secretary; said measuring and controlling devices or automatic gauges shall be subject to the inspection of the United States, whose authorized representatives may at all times have access to them, and any deficiencies found shall be promptly corrected by the users thereof. The United States shall be under obligation to deliver water only at diversion points where measuring and controlling devices or automatic gauges are maintained, in accordance with this contract, but in the event diversions are made at points where such devices are not maintained, the Secretary shall estimate the quantity of such diversions and his determination thereof shall be final.

CHARGES FOR STORAGE AND DELIVERY OF WATER

9. No charge shall be made for the storage or delivery of water at diversion points as herein provided necessary to supply present perfected rights in Arizona. A charge of 50¢ per acre-foot shall be made for all water actually diverted directly from Lake Mead during the Boulder Dam cost repayment period, which said charge shall be paid by the users of such water, subject to reduction by the Secretary in the amount of the charge if it is concluded by him at any time during said cost-repayment period that such charge is too high. After expiration of the cost-repayment period, charges shall be on such basis as may hereafter be prescribed by Congress. Charges for the storage or delivery of water diverted at a point or points below Boulder Dam, for users, other than those specified above, shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, and shall be paid by such users; provided such charges shall, in no event, exceed 25¢ per acre-foot.

RESERVATIONS

10. Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said

states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III (a) of the Colorado River Compact; (3) what part, if any, is within Article III (b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by said Compact; and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system; provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III (a) of the Colorado River Compact between the Upper Basin and the Lower Basin.

DISPUTES AND DISAGREEMENTS

11. Whenever a controversy arises out of this contract, and if the parties hereto then agree to submit the matter to arbitration, Arizona shall name one arbitrator and the Secretary shall name one arbitrator and the two arbitrators thus chosen shall meet within ten days after their selection and shall elect one other arbitrator within fifteen days after their first meeting, but in the event of their failure to name the third arbitrator within thirty days after their first meeting, such arbitrator not so selected shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Tenth Circuit. The decision of any two of the three arbitrators thus chosen shall be a valid and binding award.

RULES AND REGULATIONS

12. The Secretary may prescribe and enforce rules and regulations governing the delivery and diversion of waters hereunder, but such rules and regulations shall be promulgated, modified, revised or extended from time to time only after notice to the State of Arizona and opportunity is given to it to be heard. Arizona agrees for itself, its agencies and water users that in the operation and maintenance of the works for diversion and use of the water to be delivered hereunder, all such rules and regulations will be full adhered to.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

13. This contract is made upon the express condition and with the express covenant that all rights of Arizona, its agencies and water users, to waters of the Colorado River and its tributaries, and the use of the same, shall be subject to and controlled by the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the Act of Congress approved August 19, 1921 (42 Stat. 171), as approved by the Boulder Canyon Project Act.

EFFECTIVE DATE OF CONTRACT

14. This contract shall be of no effect unless it is unconditionally ratified by an Act of the Legislature of Arizona, within three years from the date hereof, and further, unless within three years from the date hereof the Colorado River Compact is unconditionally ratified by Arizona. When both ratifications are effective, this contract shall be effective.

INTEREST IN CONTRACT NOT TRANSFERABLE

15. No interest in or under this contract, except as provided by Article 7 (1), shall be transferable by either party without the written consent of the other.

APPROPRIATION CLAUSE

16. The performance of this contract by the United States is contingent upon Congress making the necessary appropriations for expenditures for the completion and the operation and maintenance of any dams, power plants or other works necessary to the carrying out of this contract, or upon the necessary allotments being made therefore by any authorized federal agency. No liability shall accrue against the United States, its officers, agents, or employees by reason of the failure of Congress to make any such appropriations or of any federal agency to make such allotments.

MEMBER-OF-CONGRESS CLAUSE

17. No Member of or Delegate to Congress or Resident Commissioners shall be admitted to any share or part of this contract or to any benefit that may arise

herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

DEFINITIONS

18. Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act, such definitions shall apply in construing this contract.

19. In witness whereof the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,

By (s) HAROLD L. ICKES,
Secretary of the Interior.

STATE OF ARIZONA, acting by and through its COLORADO RIVER COMMISSION,

By (s) HENRY S. WRIGHT, *Chairman.*

By (s) NELLIE T. BUSH, *Secretary.*

Approved this 11th day of February 1944:

(s) SIDNEY P. OSBORN,
Governor of the State of Arizona,

Office Supreme Court, U.S.
FILED
DEC 8 1952

IN THE

Supreme Court of the United States

October Term, 1952

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

Return of Defendants to Rule to Show Cause and Brief in Support of Return.

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County of San Diego, California.

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Complainant,

vs.

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Defendants.

RETURN OF DEFENDANTS TO RULE TO SHOW CAUSE.

Come now defendants above named and, in response to the Rule to Show Cause issued by this Court on October 13, 1952, in the above entitled proceeding, submit the following Return:

1. Defendants desire that the above entitled action proceed to an effective judgment on the merits.

2. A prior decision of this Court (*Arizona v. California*, 298 U. S. 558) indicates that the United States is an indispensable party to the proposed action.

3. Defendants are advised that the Acting Solicitor General of the United States has represented to this Court, by letter dated October 8, 1952, that the United

States has decided to move for leave to intervene, and that if Arizona shall be granted leave to file its bill of complaint herein, such motion will be made at the appropriate time. This return is filed in reliance upon that representation of the Acting Solicitor General.

4. Defendants therefore interpose no objection to an order granting complainant's motion for leave to file the bill of complaint.

5. All defenses, including, but not limited to, the defense that indispensable parties, particularly the United States, are not joined herein, are hereby reserved.

Respectfully submitted,

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BRIEF OF DEFENDANTS IN SUPPORT OF RETURN TO RULE TO SHOW CAUSE.

Statement of the Case.

It is not considered that, for the purposes of this return and brief, any further statement of the case is required than that stated in connection with complainant's motion.

ARGUMENT.

I.

A Serious Interstate Controversy Should Be Ended.

Defendants earnestly desire that the controversy between the states be litigated and brought to final judicial determination. That controversy, the subject matter of which is the claims of the states to rights to use the waters of the Colorado River system, has persisted in varying form throughout more than 25 years. (See complainant's statement in support of its motion; p. 3.) It is grounded principally on the fact that the two states interpret differently a series of documents and statutes which collectively have been called the "law of the River." These writings include the Colorado River Compact, 45 Stat. 1057 (1922), the Boulder Canyon Project Act, 45 Stat. 1057 (1928), the California Limitation Act, Stats. Cal. 1923, p. 38 (1929), the Boulder Canyon Project Adjustment Act, 54 Stat. 774 (1940), the Mexican Water Treaty, Treaty Series 994 (1945), and a group of water contracts executed by the Secretary of the Interior under the authority of Section 5 of the Project Act with (a) five public agencies in California (1930-1934); (b) the State of Nevada (1942-1944); and (c) the State of Arizona (1944).

At the instance of Arizona, several facets of the problem have been submitted to this Court in *Arizona v. California, et al.*, 283 U. S. 423 (1931), *Arizona v. California, et al.*, 292 U. S. 341 (1934), and *Arizona v. California, et al.*, 298 U. S. 558 (1936). Each of these cases was disposed of by the Court with opinion on preliminary proceedings.

The subject matter of the controversy has not been comprehensively treated by the Court. There is consequently a variety of unsolved problems upon the solution of which depends the economic future of the basin of the Colorado.

In addition to the Court proceedings mentioned, Arizona and California have contested in the Congress for many years over legislative measures which were not enacted by the Congress, among other reasons, because of the fact that the issues between the states are undetermined. The Secretary of the Interior, in his official report entitled "The Colorado River Basin" (House Doc. 419, 80th Cong. p. 5), states:

> "That further development of the water resources of the Colorado River Basin, particularly large-scale development, is seriously handicapped, if not barred, by lack of determination of the rights of the individual states to utilize the waters of the Colorado River system."

The controversy between the states is longstanding, grave and deep seated. Efforts to adjust it by negotiation have been made in scores of interstate conferences without avail. The only forum in which the questions at issue can be determined is that of this Court. (Const. U. S., Art. III, Sec. 2, Cl. 2.)

II.

The United States as an Indispensable Party.

Notwithstanding defendants' desire that the litigation proceed, they conceive it to be their duty to the Court to bring to the Court's attention the fact that a prior decision of this Court indicates that the United States is an indispensable party, but it is not named as a party in the proposed bill of complaint. It was on that ground that this Court refused leave to file the bill of complaint in the last case between these states (298 U. S. 558) in 1936. That case was commenced by Arizona against the other six states of the Colorado River Basin, seeking an equitable apportionment of the waters of the River. In its opinion the Court lists the following factors bearing on the interest of the United States in such a suit:

(a) The Colorado River is navigable.

(b) The privilege to appropriate and use its water is "subject to the paramount power of the United States to improve it for the purpose of navigation." (P. 569.)

(c) The Boulder Canyon Project Act authorized the Secretary of the Interior to construct Boulder Dam (now Hoover Dam). It provides for control and management of the water by the United States, and declares that this authority is conferred subject to the terms of the Colorado River Compact "for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for delivery of the stored

waters thereof, for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy . . ." (P. 569.)

(d) Section 5 of the Act provides that "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract" made by the Secretary of the Interior. The Secretary had made such contracts for delivery of 5,362,000 acre-feet of stored water to California agencies. The Secretary had also made contracts for financing and construction of Parker and Imperial Dams and the All-American Canal. (P. 570.)

(e) The Court concludes, "Every right which Arizona asserts is so subordinate to and dependent upon the rights and exercise of an authority asserted by the United States that no final determination of the one can be made without a determination of the extent of the other. Although no decree entered in its absence can bind or affect the United States, that fact is not an inducement for this Court to decide the rights of the states which are before it by a decree which, because of the absence of the United States, could have no finality." (Pp. 571-572.)

On that ground the Court denied leave to file the bill.

The chief factual difference between the case above mentioned and the bill of complaint presently proposed by Arizona is that in 1936 Arizona had not attempted to

ratify the Colorado River Compact, and on the contrary had refused to do so. In addition, Arizona had made no contract with the Secretary of the Interior for water under Section 5 of the Boulder Canyon Project Act. In the present bill, Arizona alleges (p. 8) that she ratified the Compact on February 24, 1944, and on the same date (p. 19) entered into a contract with the United States under Section 5.

The present proposed bill, while not seeking an "equitable share" of the use of waters of the River system, seeks to quiet Arizona's title to the use of a given amount of water per annum. The net objective is, therefore, substantially the same as that of the prior bill.

Since 1936 the following circumstances have supervened:

(a) The United States entered into a treaty (with 11 reservations) ratifications of which were exchanged November 8, 1945, for delivery to the United Mexican States of a large quantity of water of the Colorado River system (Executive A, 78th Cong., 2nd Sess., and protocol relating thereto) and, acting through the State Department, is delivering such water.

(b) As required by the Mexican Water Treaty, the United States has constructed Davis Dam on the Colorado River between Hoover Dam and Parker Dam, in part for the purpose of metering out water to Mexico.

(c) The United States has constructed for the benefit of the Colorado River Indian Reservation, Arizona, Headgate Rock Dam and an irrigation system which diverts water from the River near Parker, Arizona. It has also completed construction of Imperial Dam and the All-American Canal for the benefit of the Imperial and Coachella Valleys in California, and the Gila Project for the benefit of the Yuma Mesa and Wellton-Mohawk areas, Arizona.

(d) The Secretary of the Interior has executed additional contracts under Section 5 of the Project Act for delivery of water from storage behind Hoover Dam with:

1. State of Nevada (1942-1944);
2. State of Arizona (1944);
3. The Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona (1952);

The Secretary has also made amendatory and supplemental contracts as follows:

4. San Diego County Water Authority (1946);
5. Yuma County Water Users Association (1951);
6. Imperial Irrigation District (1952).

(e) The Act of June 28, 1946 (60 Stat. 338), provides:

"That for the purpose of controlling the floods, improving navigation, and regulating the flow of the

Colorado River, there is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the fiscal year ending June 30, 1928, and annually thereafter, such sums as may be necessary, to be spent by the Bureau of Reclamation under the direction of the Secretary of the Interior, to defray the cost of (a) operating and maintaining the Colorado River front work and levee system in Arizona, Nevada and California; (b) constructing, improving, extending, operating and maintaining protection and drainage works and systems along the Colorado River; (c) controlling said River, and improving, modifying, straightening and rectifying the channel thereof; and (d) conducting investigations and studies in connection therewith . . . ."

The foregoing outline of the interests of the United States in the Lower Colorado River and the subject matter of the proposed suit finds ample support in the report of the Secretary of the Interior, dated May 13, 1948, and addressed to the Chairman of the Senate Committee on Interior and Insular Affairs (Hearings before Sub-Committee of Senate Committee on Interior and Insular Affairs, 80th Cong., 2nd Sess., on S. J. Res. 145, pp. 363, 367).

It is therefore indicated that, as in the 1936 case, the United States is an indispensable party to the proposed suit.

III.

The United States Has Decided to Move to Intervene.

The Acting Solicitor General of the United States, at the request of both the States of California and Arizona, has written the Clerk of the Court the following letter:

"October 8, 1952

Clerk, United States Supreme Court
Washington, D. C.

Re: State of Arizona v. State of California, *et al.*, No. Original.

Dear Sir:

It has been called to our attention that the State of Arizona has filed a Motion for Leave to File a Bill of Complaint against the State of California and certain irrigation and water districts and municipalities in California.

In view of the decision of this Court in *Arizona v. California*, 298 U. S. 558, on an earlier motion for leave to file a bill of complaint concerning water rights in the Colorado River, the question may arise as to whether the United States is an indispensable party to the new suit. In this connection it seemed advisable that the Court should be promptly notified that the interests of the United States in the questions sought to be raised are such that the United States has decided to move for leave to intervene in the pending case. Such a motion will be filed at the

appropriate time, if Arizona is granted leave to file its complaint. I would appreciate your bringing this letter to the attention of the Court.

Copies of this letter will be sent to counsel for the parties.

Sincerely yours,

ROBERT L. STERN,
Acting Solicitor General."

Defendants rely upon this letter in filing this return. They consider that the action that the United States has decided to take is eminently proper.

IV.

Defendants Therefore Do Not Oppose Complainant's Motion.

Defendants therefore interpose no objection to an order granting complainant's motion for leave to file the bill of complaint.

V.

All Defenses Are Reserved.

Under the circumstances hereinabove outlined the defendants find it necessary to reserve all defenses, including but not limited to the defense that indispensable parties are not joined herein. Obviously any judgment rendered herein should be final and controlling in the future administration of the Colorado River system. This

reservation is made so that the defendants will be at liberty to raise all issues which may be considered necessary to attain finality in the resulting decree.

Respectfully submitted,

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MOTION FILED DEC 21 1952

Office-Supreme Court, U.S.
FILED
JAN 19 1953
HAROLD B. WILLEY, Clerk

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No. , Original

In the Supreme Court of the United States

October Term, 1952

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, CITY OF SAN BERNARDINO, CITY OF PASADENA, SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT, SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, ORANGE COUNTY WATER DISTRICT, CITY OF SANTA ANA, CITY OF SAN JUAN CAPISTRANO, CITY OF RIVERSIDE, RIVERSIDE WATER COMPANY, RIVERSIDE FLOOD CONTROL AND WATER CONSERVATION DISTRICT, RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, CITY OF COLTON, SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, SAN BERNARDINO COUNTY, SAN BERNARDINO COUNTY WATER CONSERVATION DISTRICT, SAN BERNARDINO COUNTY WATER CONSERVATION DISTRICT, ZONE D, CITY OF CHINO, CHINO BASIN MUNICIPAL WATER DISTRICT, CITY OF ONTARIO, CITY OF UPLAND, SAN ANTONIO WATER COMPANY, SAN ANTONIO WATER COURSE, SAN ANTONIO IRRIGATION DISTRICT, SAN ANTONIO CANYON MUTUAL WATER COMPANY, CITY OF POMONA, CITY OF CLAREMONT, LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, LOS ANGELES COUNTY, LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, ZONE 5, CITY OF GLENDALE, CITY OF BURBANK, CITY OF SAN FERNANDO

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In the Supreme Court of the United States

OCTOBER TERM 1952

No. —, Original

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS

MOTION ON BEHALF OF THE UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE

The Attorney General and Solicitor General, on behalf of the United States of America, respectfully move this Court for leave to intervene in the above-entitled cause, and for leave to file a petition for intervention for the following reasons:

I

The State of Arizona, as complainant, seeks to invoke the original jurisdiction of this Court pursuant to the provisions of Article III, Sec-

tion 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River, a navigable, interstate stream. By a letter dated October 8, 1952, Mr. Robert L. Stern, Acting Solicitor General, advised this Court that in the event the request of the State of Arizona for permission to file its complaint was granted, the United States would move to intervene in the cause. Premised upon that action by the United States, the State of California and the other defendants named in Arizona's complaint advised this Court on December 8, 1952, of their desire to have the case proceed to effective judgment on the merits and that they would not interpose an objection to Arizona's motion for leave to file its Bill of Complaint.

II

For many years there has been a most serious conflict between the State of Arizona and the State of California regarding their respective rights to the use of the water of the Colorado River. On three different occasions the State of Arizona has unsuccessfully sought relief from this Court in connection with that long-standing controversy.[1] The pending motion is Arizona's

[1] *Arizona* v. *California*, 283 U. S. 423 (1931); *Arizona* v. *California*, 292 U. S. 341 (1934); *Arizona* v. *California*, 298 U. S. 558 (1936).

fourth attempt to obtain an adjudication in this conflict. By it Arizona seeks to have the rights which it claims in the Colorado River quieted as against the named defendants; to have construed the Colorado River Compact, the Boulder Canyon Project Act,[2] related laws, contracts and documents. In addition it seeks injunctive and ancillary relief.

III

Important in regard to the dispute between the several claimants to rights in the Lower Basin of the Colorado River are the physical phenomena of that stream and the region traversed by it. Rising in the State of Colorado near the crest of the Continental Divide at an elevation of approximately nine thousand feet above sea level, it flows for a distance of 1293 miles, draining portions of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. More than half of the average annual yield of that stream is derived from the precipitation in the form of snow and rain which fall upon the high mountains in Colorado and Wyoming. The stream in question flows through the Western half of Colorado, the State of its origin, and then through the State of Utah where it has its confluence with the Green River which rises in Wyoming. After crossing the common boundary of Utah and Ari-

[2] 43 U. S. C. 617 et seq.

zona it proceeds in a south and westerly direction to a point where it forms the boundary between the State last mentioned and Nevada. For a distance of 145 miles it separates the two States. Thereafter for 235 miles it constitutes the boundary between Arizona and California; for 16 miles it is the boundary between the State of Arizona and the Republic of Mexico. For a distance of 75 miles it flows across Mexico terminating in the Gulf of California. For 688 miles, more than half its length, the Colorado River flows in or upon the boundary of the State of Arizona. Historically commerce was carried on in the navigable lower reaches of the stream.

IV.

In its course the Colorado River traverses a semiarid area of approximately 240,000 square miles in which agriculture can be successfully practiced only through artificial irrigation. However, marked geographical and climatological differences exist between the upper reaches of the river and the lower. The former is an area of high elevations resulting in shorter growing seasons, lower demands for water and by reason of the conformation of the area, has a relatively high return flow. In the lower reaches of the stream large areas susceptible of irrigation are found. Due to the extreme aridity of climate and the long growing season the demand for water for each acre irrigated is high. Works of great mag-

nitude with commensurate costs are required to irrigate those lands.

Nearly 1,000 miles of canyon separate the lands upon which water may be beneficially applied in the upper States of the Colorado River Basin and those upon which water may be beneficially used in the Lower Basin.

V

Shortly after the turn of the present century the claims to rights to the use of water in the natural flow of the Lower Basin of the Colorado River exceeded the available supply during the latter summer months, with the attendant loss of crops due to the shortage of irrigation water. By way of contrast, early spring floods intermittently caused severe damage. Conservation of the run-off of the stream in the Lower Basin in high water periods, through regulatory dams and impounding reservoirs, was essential. That development in the lower reaches of the river was impeded, however, by the need for an apportionment of the available supply of water between the two reaches of the river alluded to in the preceding paragraph. Understandably the States of the Upper Basin viewed with concern the possible loss of their rights to the Lower Basin should that development take place without some assurance that their future needs in the river would be protected.

VI

To accomplish the required allotment and to insure the Upper Basin States that their rights would not be impaired by the development in the Lower Basin, the Colorado River Compact was formulated and signed November 24, 1922, by the several States of the Basin—Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. By specific act of Congress[3] and Presidential Proclamation,[4] the Colorado River Compact became effective June 25, 1929, though Arizona at that time failed to ratify it. One of the conditions to the requisite Congressional approval of the Compact was that "the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters appor-

[3] Boulder Canyon Project Act, 43 U. S. C. 617 et seq.
[4] 46 Stat. 3000.

tioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."[5] California complied with that condition.[6] It was not until February 24, 1944, that the State of Arizona ratified the Compact.

VII

By the Colorado River Compact there was apportioned in perpetuity from the Colorado River System to the Upper Basin and to the Lower Basin respectively, the exclusive beneficial consumptive use annually of 7,500,000 acre-feet of water. In addition there was given to the Lower Basin the right to increase annually its beneficial consumptive use of water by 1,000,000 acre-feet.[7] The point of division between the Upper

[5] 43 U. S. C. 617c.

[6] Statutes and Amendments to the Codes of California, 1929 Extra Session, c. 16 "An act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the 'Boulder canyon project act' * * *."

[7] Colorado River Compact, Article III (a), (b).

"Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River above Lee Ferry.

"Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from

and the Lower Basin is Lee Ferry, 23 miles below the common boundary of the State of Arizona and the State of Utah.[8] Provision is likewise made in the Compact that under prescribed conditions water unapportioned by the Compact will be allocated at any time subsequent to October, 1963.[9]

VIII

Though repeated efforts have been made amicably to apportion among the States of the Lower Basin the waters allocated to them by the Colorado River Compact, those efforts have failed. Thus as evidenced by the Bill of Complaint of the State of Arizona, there remains undecided the question of the share of the water each State is to receive under the Colorado River Compact and the Boulder Canyon Project Act. Further, as evidenced by the Bill of Complaint of the State of Arizona the construction to be placed upon certain provisions of the Compact is a matter of grave import having far-reaching effect upon the respective rights of the parties to the controversy. Until those disputed issues are resolved, neither the United States of America nor

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which waters naturally drain into the Colorado River System below Lee Ferry.

"Lee Ferry" as noted in the text means a point on the main stream of the Colorado River a short distance below the common boundary of the States of Utah and Arizona.

[8] Colorado River Compact, Article II (f), (g).

[9] Colorado River Compact, Article III (a), (b), (c), (f).

the State of Arizona nor the parties named in Arizona's Bill of Complaint may safely proceed with further construction of diversion works from the main channel of the Colorado River involving consumptive use (domestic, agricultural, industrial, municipal) of water in the Lower Basin of the Colorado River. How those issues are resolved will greatly affect the existing and future economy of the respective States of Arizona and California.

IX

On October 11, 1948, the States of Arizona, Colorado, New Mexico, Utah and Wyoming apportioned percentage-wise among themselves the 7,500,000 acre-feet allotted to the Upper Basin under the Colorado River Compact. Relying upon the quantity of water accorded to them by the Colorado River Compact and their more recent covenant, the Upper Basin States have, in cooperation with the United States, proceeded to construct, are now constructing, and plan to construct huge projects for the conservation and utilization of that water.

X

Pursuant to the Boulder Canyon Project Act, alluded to above, and to the Reclamation Act of 1902,[10] and acts supplementary to them, the Secre-

[10] Act of June 17, 1902, Ch. 1093, 32 Stat. 388, 43 U. S. C. 391.

tary of the Interior undertook the construction of gigantic projects involving the expenditure of virtually one-half billion dollars. These are the objectives which have been expressed by Congress in connection with the development of the Colorado River in the Lower Basin—the controlling of the floods, improving navigation, regulating the flow of the Colorado River, providing for storage, for the delivery of the stored waters for reclamation of public lands, and other beneficial uses."[11] Included in that development of the Lower Basin of the Colorado River are the following components:

a. Hoover Dam, at Black Canyon, 325 miles above the Mexican boundary. This is the principal structure of the Lower Basin impounding the waters which comprise Lake Mead.

b. Davis Dam, which is located 67 miles below Hoover Dam. This structure implements the regulation of the river by Hoover Dam, impounds water for the generation of electricity and is in furtherance of the objectives of the Boulder Canyon Project Act. By express provision of the Mexican Water Treaty alluded to subsequently, the United States of America was required to construct Davis Dam to make possible the river regulation provided for in the Treaty.

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[11] 43 U.S.C. 617.

c. Parker Dam, situated 155 miles below Hoover Dam, creates Havasu Lake and is the diversion point of the Colorado River Aqueduct of the Metropolitan Water District of Southern California, which District cooperated in financing the building of the structure; waters impounded by it are utilized to generate electricity and it is operated in conjunction with Davis Dam under the Mexican Water Treaty.

d. Imperial Dam, 303 miles below Hoover Dam. It is the headworks for the All-American Canal, a Bureau of Reclamation Project in the State of California, the largest irrigation diversion system constructed in the Lower Basin development. It is likewise a diversion structure for the Gila Canal in the State of Arizona and for the Yuma Reclamation Project in the States of Arizona and California.

e. Laguna Dam, situated approximately 308 miles below Hoover Dam, a structure of the Yuma Reclamation Project mentioned above.

In addition to the principal structures mentioned, there has been constructed and is now operated a system of generators, diversion works, ditches and laterals all built and maintained to accomplish the purposes for which the Congress of the United States adopted the Reclamation Act of 1902, the Boulder Canyon Project Act, and acts amending and supplementing those acts.

XI

In accordance with the direction and authorization contained in the Boulder Canyon Project Act the Secretary of the Interior has entered into contracts for the delivery of water stored by Hoover Dam. Exercising that authority the Secretary on behalf of the United States entered into a contract dated February 9, 1944, with the State of Arizona, for the delivery annually of 2,800,000 acre-feet of water. Earlier contracts for the delivery annually of 5,362,000 acre-feet of water were entered into by the Secretary with the defendants named in the Bill of Complaint, Metropolitan Water District of Southern California, the Imperial Irrigation District, Palo Verde Irrigation District, and the Coachella Valley County Water District. Though a contract was originally entered into with the defendant City of San Diego by the Secretary of the Interior, subsequent arrangements with the Metropolitan Water District of Southern California by the City of San Diego caused the original contract to be superseded. Though the defendant City of Los Angeles does not have a contract with the Secretary of the Interior, it is a prime beneficiary of the above-mentioned contract of the defendant Metropolitan Water District of Southern California. In addition, premised upon the same authority, the Secretary of the Interior has contracted to deliver to the State of Nevada 300,000

acre-feet. Thus the contracts which the Secretary of the Interior has entered into in the Lower Basin for the delivery of stored water total 8,462,000 acre-feet annually. Contained in substance in each of the contracts is a provision that the United States shall, from storage available in the reservoir created by Hoover Dam, deliver water at a point on the Colorado River in accordance with the Colorado River Compact and the Boulder Canyon Project Act.

XII

In addition to the foregoing rights, interests and obligations of the United States of America in the Lower Basin of the Colorado River arising in connection with the Colorado River Compact and the Boulder Canyon Project Act, it has many others. Reference in that regard is made to the Colorado River Compact which provides that "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."[12] Thus there is excluded from the operation of the compact the rights of the United States to divert or to have diverted water from the Colorado River and its tributaries on behalf of the Indians. There is annually diverted for or by the Indians from the Colorado River and its tributaries in the Lower Basin in excess of 750,000 acre-feet and there are

[12] Colorado River Compact, Article VII.

asserted, in the ultimate, claims to a greater amount.

A principal structure across the main channel of the stream in question is the Headgate Rock Dam situated 14 miles below Parker Dam. That structure diverts water for use in the Colorado River Indian Reservation in the State of Arizona. Other large irrigation projects have been constructed for the benefit of the Indians on the tributaries of that stream.

XIII

In addition to the rights, interests, and obligations of the United States alluded to above, it has international responsibilities to Mexico pursuant to a treaty whereby there was "guaranteed" to Mexico an annual quantity of 1,500,000 acre-feet of Colorado River water.[13]

XIV

In addition to other responsibilities on the stream, flood control on the Colorado River is an important function of the United States. Not only is it required to operate Lake Mead in a manner which will afford flood control benefits but it is now building on the Bill Williams River and the Gila River large structures which will be operated primarily for that purpose.

[13] Treaty, Executive A, 78th Congress, 2d sess.; Protocol, Executive A, 78th Cong., 2d sess. Pursuant to the Mexican Treaty Davis Dam was constructed by the United States.

XV.

Large Fish and Wild Life projects are owned and operated by the United States on the Colorado River. Similarly, there are in the Lower Basin numerous recreational areas under the jurisdiction of the National Park Service. Administered by the Bureau of Land Management are large areas of public domain susceptible of cultivation only if artificially irrigated. All of those Federal functions in the Lower Basin of the Colorado River are dependent upon that source or its tributaries for water.

XVI

The aggregate of the various claims to rights to the use of water in the Lower Basin of the Colorado River far exceeds the eight million five hundred thousand acre-feet of water available to that Basin under the Colorado River Compact. Moreover, the State of Arizona asserts claims adverse to the rights to the use of water claimed and exercised by the named defendants and brings into question the rights and interests claimed and exercised by the United States in the Lower Basin. In addition, the adverse claimants seek different interpretations of the several provisions of the Colorado River Compact, the Boulder Canyon Project Act, related laws and documents.

Premised upon the adverse claims of the parties litigant to the waters allocated to the Lower

Basin of the Colorado River, it is necessary and appropriate that the United States have declared its rights and interests in the Lower Basin of the Colorado River, and have them quieted as against those adverse claims. It is also necessary and appropriate that the United States have defined its obligations and responsibilities in the Lower Basin of the Colorado River and have such other and further relief as this Court may deem proper.

Wherefore, the United States of America respectfully prays this Court to permit it to file a petition for intervention in this case subsequent to the time that the defendants have filed their answers to the Bill of Complaint of Arizona.[14]

JAMES P. MCGRANERY,
Attorney General.

WALTER J. CUMMINGS, JR.,
Solicitor General.

DECEMBER , 1952.

[14] The United States is unable to formulate a proper and detailed petition for intervention until the defendants have made their formal claims and disclosed their positions in their answers to the Bill of Complaint.

In the Supreme Court of the United States

OCTOBER TERM 1952

No. —, Original

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS

BRIEF OF THE UNITED STATES OF AMERICA IN SUPPORT OF MOTION TO INTERVENE

PRELIMINARY STATEMENT

In the motion to intervene of the United States of America, the long-standing controversy respecting rights to the use of water in the Lower Basin of the Colorado River is reviewed. As revealed in that motion, the State of Arizona has for the fourth time sought relief from this Court in regard to that controversy.[1] Reference there

[1] Motion on Behalf of the United States of America for Leave to Intervene, par. II.

was likewise made to the previous expression of intention on the part of the United States to intervene in the proceeding if Arizona's motion is granted; and to the declaration filed with this Court by the State of California and the other named defendants, which, having first referred to the need for a judicial determination of the controversy on the merits, declared, based upon the expression of intention by the United States, that they would interpose no objection to the granting of Arizona's motion.

By a letter dated October 15, 1952, this Court through its Clerk requested the United States of America to express its views in regard to jurisdiction. In the light of the facts contained in the motion of the United States and the Bill of Complaint of the State of Arizona, those views will be expressed in this brief.

To be emphasized at the outset is the fact that there has been apportioned by the Colorado River Compact from the Colorado River System in perpetuity to the Upper Basin of that stream the exclusive beneficial consumptive use of 7,500,000 acre-feet of water. Similarly, there has been apportioned from the Colorado River System in perpetuity to the Lower Basin of that stream the exclusive beneficial consumptive use of 7,500,000 acre-feet of water. In addition to this apportionment to the Lower Basin, the Colorado River Compact gives to the Lower Basin the right to increase its beneficial consumptive use of such

water by 1,000,000 acre-feet annually.[2] By its Bill of Complaint, the State of Arizona seeks only to have this Court assume jurisdiction in regard to rights to the use of water in the Lower Basin of the stream in question.

DISCUSSION

I. THIS COURT IS INVESTED BY THE CONSTITUTION AND CONGRESSIONAL ENACTMENTS WITH ORIGINAL JURISDICTION OF CASES OF THE GENERAL CHARACTER HERE INVOLVED

This Court has original and exclusive jurisdiction of cases of the character which the State of Arizona seeks to initiate against the State of California and the other named defendants, as is clear from the constitutional provisions pursuant to which the Nation's judiciary has been established,[3] and from express congressional enact-

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[2] Colorado River Compact, Article III (a) and (b).

"Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River above Lee Ferry.

"Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry.

"Lee Ferry" means a point on the main stream of the Colorado River a short distance below the common boundary of the States of Utah and Arizona. See par. VII of the Motion on Behalf of the United States of America for Leave to Intervene.

[3] Constitution of the United States, Article III, Section 2, Cl. 2.

ment: "The Supreme Court shall have original and exclusive jurisdiction of: (1) All controversies between two or more States; * * *."[4]

Repeatedly, this Court has assumed jurisdiction where, as here, a controversy respecting an interstate stream has arisen.[5] Under circumstances resembling the present controversy, the Court exercised original jurisdiction over a controversy between the States of Wyoming and Colorado concerning their respective rights to divert and use water from an interstate stream.[6] Earlier, jurisdiction was assumed by this Court regarding a dispute between the States of Colorado and Kansas.[7] By Colorado's pleading, the question was presented as to whether it was empowered wholly to deprive the State of Kansas of the benefit of water from a stream which rises in the State of Colorado and by nature flows through Kansas.[8] Jurisdiction was likewise assumed in the injunctive proceeding initiated by the State of Wisconsin and others against the State of Illinois and a public corporation of that State to prevent the withdrawal of large quantities of water from Lake Michigan.[9] Original jurisdiction by this Court has been assumed in cases between States involving the pol-

[4] 28 U. S. C. 1251.

[5] See *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22, 26–7 (1950).

[6] *Wyoming* v. *Colorado*, 259 U. S. 419 (1922).

[7] *Kansas* v. *Colorado*, 185 U. S. 125 (1902).

[8] See also *Kansas* v. *Colorado*, 206 U. S. 46 (1907).

[9] *Wisconsin* v. *Illinois*, 278 U. S. 367 (1929).

lution of an interstate stream.[10] More recently, this Court entertained the bill of complaint in an original proceeding by the State of Nebraska against the State of Wyoming to have determined the rights of the two States in the waters of the North Platte River.[11]

Moreover, Arizona's Bill of Complaint presents issues concerning the interpretation of the Colorado River Compact, an interstate agreement. Such questions of compact construction are federal in nature, and if the suit is otherwise within this Court's jurisdiction, are properly to be determined by this Court.[12] Since this is a suit by one State against another State—and thus within the Court's original jurisdiction—the issues of interpretation of the Compact are properly before it.[13]

From these authorities it is manifest that this Court has accorded judicial cognizance to controversies between States involving issues of the character presented by Arizona in its Bill of Complaint. In addition, however, to those deci-

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[10] *Missouri* v. *Illinois*, 180 U. S. 208 (1900).

[11] *Nebraska* v. *Wyoming*, 295 U. S. 40 (1935), 325 U. S. 589 (1944); see also *Texas* v. *New Mexico*, 343 U. S. 932, order entered December 23, 1952, No. 9 Orig. (1952).

[12] *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22 (1950); *Kentucky* v. *Indiana*, 281 U. S. 163 (1930); *Hinderlider* v. *La Plata Co.*, 304 U. S. 92 (1937).

[13] See *Kentucky* v. *Indiana*, 281 U. S. 163 (1930). In Part IV, *infra*, we discuss the reasons for taking jurisdiction of the present controversy.

sions, are those regarding the controversy which the State of Arizona seeks permission to bring before this Court for settlement. Those decisions are considered in some detail in the section which follows.

II. REVIEW OF EARLIER DECISIONS OF THIS COURT RESPECTING THE CONTROVERSY BETWEEN THE STATES OF ARIZONA AND CALIFORNIA

The earlier decisions respecting Arizona's efforts to have this Court resolve the long-standing controversy to which Arizona's Bill of Complaint relates and which California has expressed its desire to have determined on its merits, and the factors giving rise to them, will be reviewed in the order in which they were rendered by this Court.

On October 13, 1930, Arizona filed an original Bill of Complaint against the then Acting Secretary of the Interior, Ray Lyman Wilbur, and the other Colorado River Basin States of California, Nevada, Utah, New Mexico, Colorado and Wyoming.[14] Among other things, the Bill challenged the constitutionality of the Boulder Canyon Project Act.[15] Arizona likewise prayed that the Secretary of Interior and the other named defendants be permanently enjoined from carrying out the provisions of the last-mentioned Act. All of the defendants moved to dismiss Arizona's

[14] *Arizona* v. *California*, 283 U. S. 423 (1931).

[15] Act of December 21, 1928 (45 Stat. 1057), 43 U. S. C. 617 et seq.

Bill on the grounds that: (1) the United States, not joined in the proceeding, was an indispensable party; (2) the Bill did not present a case of which this Court would take judicial cognizance; (3) the action of the defendants would not invade vested rights of Arizona or its citizens; (4) the Bill did not state facts which constituted a claim against any of the defendants.

Mr. Justice Brandeis, speaking for the Court, took judicial notice of the navigable character of the Colorado River and declared the Boulder Canyon Project Act to be constitutional. Continuing, the opinion declared that Arizona could not successfully contend that there was an actual or threatened invasion of its rights. In that connection, Mr. Justice Brandeis observed: "When the Bill was filed, the construction of the dam [Hoover Dam] and reservoir had not been commenced. Years must elapse before the project is completed."[16] In the light of those facts, Arizona's Bill was "dismissed without prejudice to an application for relief in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under it, of any rights already perfected or with the right of Arizona to make additional legal appropriations and to enjoy the same."[17]

Since that dismissal, immense changes have transpired in the Lower Basin of the Colorado

[16] *Arizona* v. *California*, 283 U. S. 423, 463 (1931).

[17] *Arizona* v. *California*, 283 U. S. 423, 464 (1931).

River. Reflecting that fact are the allegations contained in the motion of which this brief is in support.[18] There, in some detail, are reviewed the structures which have, with minor exceptions, been constructed since that dismissal. A stream which in a state of nature fluctuated with great violence is now a stream subject to virtually complete regulation. Hoover Dam and the other structures on the main channel have effectuated that control with the attendant drastic change in the regimen of the stream.

Following the dismissal of the action reviewed above, Arizona, on February 14, 1934, moved for leave to file in this Court an original Bill to perpetuate testimony in actions arising out of the Boulder Canyon Project Act it would commence in the future against the State of California.[19] In its opinion, the Court observed that while no Bill to perpetuate testimony had been previously filed with it, there is no reason why it did not have jurisdiction to entertain such a bill "in aid of litigation pending * * *, or to be begun here."[20] The Bill, however, was dismissed for there was no showing that the testimony involved was competent or material evidence.

At the time that the opinion just discussed was entered, sharp conflict arose over the proposed

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[18] Motion on Behalf of the United States of America for Leave to Intervene, par. X.

[19] *Arizona* v. *California*, 292 U. S. 341 (1934).

[20] *Arizona* v. *California*, 292 U. S. 341, 347, 360 (1934).

construction of Parker Dam,[21] now an integral part of the development of the Lower Basin of the Colorado River. That conflict culminated in the United States having recourse to this Court to enjoin Arizona's interference with the completion of the structure in question.[22] The complaint, however, was dismissed by reason of its failure to declare authority for the construction of the dam. Congress subsequently granted the required authority.

Continuing its effort to have reviewed its claim to Colorado River water, Arizona, on November 25, 1935, moved this Court for leave to file a bill of complaint which in substance sought an equitable apportionment of the rights to the use of the waters of the stream in question among the States of the Colorado River Basin.[23] In dismissing Arizona's motion, this Court reviewed at length the status occupied by the United States regarding the Colorado River. Emphasized was the fact that no decree equitably apportioning the rights to the water as prayed was possible without determining the rights of the United States. Such an apportionment, declared the Court, "could not be determined without ascertaining the rights of the United States to dispose of that water * * * without challenging the disposi-

[21] Motion on Behalf of the United States of America for Leave to Intervene, par. X.

[22] *United States* v. *Arizona*, 295 U. S. 174 (1935).

[23] *Arizona* v. *California*, 298 U. S. 558 (1936).

tions already agreed to by the Secretary's contracts with the California corporations, and the provision as well of Sec. 5 of the Boulder Canyon Project Act that no person shall be entitled to the stored water except by contract with the Secretary [of the Interior]."[24] Declaring that those matters pertaining to the United States could not be determined in a proceeding to which it was not a party, the Court denied Arizona's motion since the bill of complaint "could only be dismissed because of the absence of the United States as a party."[25]

As this review shows, the State of Arizona has been repeatedly unsuccessful in securing judicial cognizance by this Court of the controversy which it asserts in its Bill of Complaint. But many elements which previously militated against that hearing are no longer present. In the succeeding section, certain of those factors are discussed.

III. PRESENT LEGAL STATUS AND DEVELOPMENTS WHICH HAVE BEARING UPON THIS COURT'S JURISDICTION

Since this Court denied Arizona's motion for leave to file a bill of complaint for the equitable apportionment of the Colorado River,[26] drastic and far-reaching changes have come about. Not the least of those changes are the willingness of

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[24] *Arizona* v. *California*, 298 U. S. 558, 571 (1936).
[25] *Arizona* v. *California*, 298 U. S. 558, 572 (1936).
[26] 298 U. S. 58.

the United States to intervene and the willingness of the State of California that the long-standing controversy be resolved on its merits.

Quite aside, however, from the revised attitude of the United States and California, other changes of significance have transpired. Arizona has ratified the Colorado River Compact and has contracted for water with the Secretary of the Interior under the terms of that Compact and the Boulder Canyon Project Act.[27]

Great impounding dams have been constructed in the main channel of the Colorado River and large diversion works have been constructed which withdraw annually from the stream millions of acre-feet of water.[28] Arizona charges that in the year 1951 there was diverted by the claimants to water in the State of California a quantity of water exceeding the 4,400,000 acre-feet and that anticipated diversion for 1952 will be greater than the quantity previously diverted. Arizona, in its Bill of Complaint, charges those diversions to be in derogation of its rights.[29] Moreover, there exist diversion works in California capable of an annual draught on the river

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[27] Motion on Behalf of the United States of America for Leave to Intervene, par. VI; par. XI.

[28] Motion on Behalf of the United States of America for Leave to Intervene, par. X.

[29] *Arizona* v. *California*, Pending Bill of Complaint, par. XXVI.

of approximately 8,000,000 acre-feet.[30] Likewise important is the fact that on what has been termed the "subject to availability clause" of the water contracts, the Secretary of the Interior has contracted to deliver annually to claimants in the Lower Basin 8,462,000 acre-feet of main stream water.[31]

Large projects have been developed and are now being developed by the United States upon the tributaries of the Colorado River in the Lower Basin. Moreover, the State of Arizona has declared that it will proceed with the construction of Granite Reef Aqueduct.[32]

Other drastic and far-reaching changes have also happened in the Lower Basin of the Colorado River since this Court's latest decision in regard to Arizona's claims. One factor is the coming into existence of the Mexican Water Treaty.[33] By that international covenant the United States of America "guaranteed" to Mexico an annual quantity of 1,500,000 acre-feet of Colorado River water. Severally, the States of the Upper Basin of the Colorado River have apportioned among themselves the 7,500,000 acre-feet

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[30] *Arizona* v. *California*, Pending Bill of Complaint, par. XXVI.

[31] Motion on Behalf of the United States of America for Leave to Intervene, par, XI.

[32] *Arizona* v. *California*, Pending Bill of Complaint, par. XXI.

[33] Motion on Behalf of the United States of America for Leave to Intervene, par. XIII.

of water annually allotted to that Basin by the Colorado River Compact.[34] Development of that Basin is going forward premised upon that apportionment.

The economies and, to a large extent, the future of the Upper and Lower Basins of the Colorado River are dependent upon the Colorado River. Predicated upon those factors reviewed above, consideration will next be directed to the controversy existing in the Lower Basin as it relates to the jurisdiction of this Court.

IV. A JUSTICIABLE CONTROVERSY EXISTS BETWEEN CLAIMANTS TO THE USE OF THE WATERS ALLOTTED TO THE LOWER BASIN BY THE COLORADO RIVER COMPACT.

In the Bill of Complaint which Arizona seeks leave to file and in the Motion of the United States to Intervene, reference is made to the allocation of the waters of the Colorado River between the Upper Basin and the Lower Basin of the Colorado River.[35] That allocation is in perpetuity establishing the measure of the rights of the two vast areas in question, which, as stated, are separated by almost a thousand miles of canyon and extremely broken terrain. Again emphasized is the fact that Arizona's Bill of Com-

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[34] Motion on Behalf of the United States of America for Leave to Intervene, par. IX.

[35] *Arizona* v. *California*, Pending Bill of Complaint, par. VI, et seq.; Motion on Behalf of the United States of America for Leave to Intervene, par. VII.

plaint relates solely to the Lower Basin. Similarly, the Motion of the United States is limited to that area.

Under the Compact and the Boulder Canyon Project Act, each Basin is proceeding to develop its respective areas in reliance upon that allocation. It is significant, however, that the Lower Basin of the Colorado River has developed far more rapidly than the Upper Basin.

The aggregate of the claims of rights to the use of water in the Lower Basin of the Colorado River greatly exceeds the firm quantities of water available to it. Otherwise stated, the 8,500,000 acre-feet accorded to the Lower Basin is insufficient to meet existing claims. Further development of consumptive uses of the Lower Basin of the Colorado River may not safely proceed until the long-standing dispute to which this suit pertains is resolved. Mr. Justice Brandeis in an earlier phase of this controversy summarized as follows the charges then made by Arizona respecting the need for a determination of rights in the Lower Basin: "The cost of installing the dams, reservoirs, canals, and distribution works required to effect any diversion, will be very heavy; and financing on a large scale is indispensable. Such financing will be impossible unless it clearly appears that, at or prior to the time of constructing such works, vested rights to the permanent use of the water will be ac-

quired."[36] That statement reveals the true character of the controversy here presented. For in the light of the present controversy, there can be no certainty in the Lower Basin respecting claims to vested rights to the permanent use of water from the Colorado River for consumptive purposes.[37]

It is recognized that this Court is reluctant to take and determine interstate water controversies unless the dispute is important, a judicial solution appears preferable, and other means of settling the controversy are, as a matter of reality, unavailable.[38] But it is likewise suggested that this case falls within the criteria for assuming jurisdiction which the Court has hitherto applied. For example, there is here presented every element which caused the Court to assume jurisdiction of another recent controversy involving an interstate stream.[39] Those factors were alluded to in the opinion in the following manner:

[1] "A genuine controversy exists." Manifestly, Arizona's pleading, the long-standing contentious struggle between the conflicting States, and the interests of the United States, resolve

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[36] *Arizona* v. *California*, 283 U. S. 423, 453 (1931).

[37] Motion on Behalf of the United States of America for Leave to Intervenue, par. VIII.

[38] See *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22, 27 (1950).

[39] *Nebraska* v. *Wyoming*, 325 U. S. 589, 608 (1944).

any doubt regarding the presence of the controversy.

[2] "The States have not been able to settle their differences by compact." That fact is indisputable in the present instance and it would appear futile to remit the parties to further negotiation.[40]

[3] "The areas involved are arid or semiarid. Water in dependable amounts is essential to the maintenance of the vast agricultural enterprises established on the various sections of the river." With greater emphasis that statement could have been written respecting the Lower Basin of the Colorado River.

[4] "The Kendrick Project plainly is an existing threat to senior appropriators downstream." With respect to this element of a present threat as a factor in determining the existence of a justiciable issue, reference is made to these facts: Diversion works in California are capable of diverting 8,000,000 acre-feet; Arizona has taken initial steps to construct the Granite Reef Project;[41] there has been guaranteed annually to Mexico 1,500,000 acre-feet; large claims are asserted on behalf of the Indians whose rights are excluded from the operation of the Colorado River Compact; contracts have been entered into by the

[40] Motion on Behalf of the United States of America for Leave to Intervene, par. VIII.

[41] *Arizona* v. *California*, Pending Bill of Complaint, par. XXI.

Secretary of the Interior for the delivery of 8,462,000 acre-feet annually;[42] sharp conflict exists over the interpretations to be placed upon the Colorado River Compact and the basic laws upon which the Lower Basin of the Colorado River has been and is now being developed.

Those contentious elements must be viewed against the background of an available supply of 8,500,000 acre-feet apportioned to the Lower Basin. In the light of those factors, it is respectfully submitted that there is present a far more acute situation in the Lower Basin of the Colorado River than that which prevailed in the *Nebraska v. Wyoming* case concerning which this Court took judicial cognizance.

In still another case, jurisdiction was assumed by this Court over a controversy between States involving an interstate stream where the aggregate of the claims to water from the stream was found to exceed the supply available in the stream.[43] Respecting that case, this Court commented: "* * * where there is not enough water in the river to satisfy the claims asserted against it, the situation is not basically different from that where two or more persons claim the right to the same parcel of land."[44] In the present case, numerous and varied claims are made which exceed the quantity of water available to the

[42] Motion on Behalf of the United States of America for Leave to Intervene, par. XI.

[43] *Wyoming* v. *Colorado*, 259 U. S. 419 (1922).

[44] *Nebraska* v. *Wyoming*, 325 U. S. 589, 610 (1944).

Lower Basin under the Colorado River Compact. The entire economy of the Lower Basin of that stream is directly and immediately affected by the manner in which the present conflict is resolved. Few cases of this character have presented more complex questions in greater need of determination.[45]

Finally, the bar to jurisdiction which this Court found in the earlier suit[46]—the indispensability of the United States—has been removed. The United States is willing, if permitted, to intervene in the litigation and to file a petition for intervention seeking a declaration of its rights and obligations. That bar being removed, there is full jurisdiction of Arizona's suit against California and the other defendants.[47] There is no question, of course, that the Court has original jurisdiction of a claim or suit by the United States against a State.[48]

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[45] This case fully meets the standard laid down by Mr. Justice Holmes, speaking for the Court, in *Missouri* v. *Illinois*, 200 U. S. 496, 521 (1905): "Before this Court ought to intervene the case should be of serious magnitude, clearly and fully proved, and the principle to be applied should be one which the court is prepared deliberately to maintain against all considerations on the other side."

[46] 298 U. S. 558 (1936).

[47] See *Arizona* v. *California*, 298 U. S. 558, 572 (1936); *Texas* v. *New Mexico*, 343 U. S. 932; order entered December 23, 1952, No. 9, Orig. (1952).

[48] *United States* v. *California*, 332 U. S. 19 (1947); *United States* v. *Louisiana*, 338 U. S. 806 (1949), 339 U. S. 699 (1949); *United States* v. *Texas*, 338 U. S. 806 (1949), 339 U. S. 707 (1949).

CONCLUSION

Accordingly, this Court is respectfully requested to grant the motion of the United States to intervene, permitting it to file its pleadings in intervention after the defendants named in Arizona's Bill of Complaint have filed their responsive pleadings.[49]

Respectfully submitted,

JAMES P. MCGRANERY,
Attorney General.

WALTER J. CUMMINGS, JR.,
Solicitor General.

DECEMBER , 1952.

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[49] See Motion on Behalf of the United States of America for Leave to Intervene, p. 16, note 14.

LIBRARY
SUPREME COURT, U.S.

No. 10 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

MOTION ON BEHALF OF SIDNEY KARTUS, SUCCESSOR TO FRED T. COLTER, APPLICANT FOR AND ON BEHALF OF THE STATE OF ARIZONA AND WATER USERS UNDER GLEN-BRIDGE-VERDE-HIGHLINE PROJECTS, AND M. C. AUGUSTINE, IONE DOCKSTADER, JOHN R. WESTBERG, E. C. HILDEBRAND, R. H. JOHNSON, JOE L. HUERTA HI-T RANCH CORPORATION, AND PERRY C. GREEN, MELVIN A. GREEN, HAROLD S. LAUER, JUDGE MANOR, I. F. NELSON, ADDIE V. BURTON, MARY E. SCHMID, AND R. V. McDANIEL, LANDHOLDERS UNDER SAID PROJECTS, FOR LEAVE TO FILE PETITION TO INTERVENE.

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SAMUEL LANGERMAN
Attorney for Petitioners

COMES NOW, SIDNEY KARTUS, successor to Fred T. Colter, Applicant for and on behalf of the State of Arizona and water users under the Glen-Bridge-Verde-Highline projects, and M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, landholders under said projects, and respectfully move this Court for leave to intervene in the above-entitled cause and for leave to file a petition for intervention for the following reasons:

I.

The State of Arizona, as complainant, has invoked the original jurisdiction of this Court pursuant to the provisions of Article III, Section 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River. On January 19, 1953, the Court granted Arizona's Motion for Leave to file Bill of Complaint and permitted the United States to file its petition for intervention in accordance with its motion requesting such permission.

II

In its Bill of Complaint, Arizona asks the Court to quiet its title to waters allegedly apportioned to Arizona by the Colorado River Compact signed at Santa Fe, New Mexico, on November 24, 1922, by representatives of the seven Colorado River states and the United States. The compact pro-

vided in Article I thereof, that "The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; . . .". Article IX thereof provided that "This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states and by the Congress of the United States. . . ". This compact was ratified by the State of Arizona through its legislature on February 24, 1944. [1]

III

Initiation of rights was begun for the Glen-Bridge-Verde-Highline Projects in 1916, and on September 20, 1923, and as amended thereafter, Fred T. Colter, then a State Senator of Arizona, on the authority of the then Governor of the State of Arizona, did file for and on behalf of the State of Arizona and water users under said Glen-Bridge-Verde-Highline Projects, applications for permits to appropriate the public waters of the State of Arizona and applications for permits to construct dams and reservoirs and to store for beneficial use all then unappropriated reservoir storage waters of the Colorado River, and did file therefor on Glen Canyon Storage, Diversion, and Power Dam, Bridge Canyon Storage, Diversion, and Power Dam, the Arizona Highline Canal, Marble Gorge, Storage, Power, and Diversion Dam, and alternate Verde Tunnel, as the principal sites and on some forty other sites, to irrigate 6,000,000 acres and develop 5,000,000 electrical horsepower,

1. Arizona Laws, 1944, First Special Session, pp. 12-13.

and for other beneficial uses of water in Arizona. These applications were filed under and by virtue of the statutes of Arizona.[2] Said applications thereafter were granted by the State Water Commissioner and the State Land Commissioner, the state officials designated by statute for such purpose.

IV

Petitioner, Sidney Kartus, is successor to Fred T. Colter as such applicant and filee.

V

From the time of initiation and filing of these applications and up to the present, they have been kept up with due and reasonable diligence in compliance with all laws relating to such matters. Eight volumes of records of such diligence are on file in the office of the State Land Commissioner of Arizona comprising some 8000 pages and hundreds of maps, charts, and exhibits. The various acts and events recorded in these eight volumes will be more fully itemized and set forth in the Petition for Intervention should the Court grant this motion.

VI

Petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, are the owners of lands presently being farmed, and Petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson,

2. Section 5337 of the Revised Statutes of 1913, Civil Code; Section 3281 of the Revised Code of 1928; Section 75-102 of the Arizona Code of 1939.

Addie V. Burton, Mary E. Schmid, and E. V. McDaniel are the owners of land presently not being farmed, all of which lands are within the projects for which said applications or filings were made. They constitute members of two classes so numerous as to make it impracticable to name them all as petitioners, but said petitioners are fairly representative of the two classes. The matters to be determined in the above-entitled cause are of common, general, and great interest to the persons constituting such classes for which reason these petitioners respectfully file this petition for all such persons in like situation pursuant to Rule 23 of the Federal Rules of Civil Procedure.

VII

Petitioners M. C. Auustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and other persons in the same class, are presently farming lands located in the central portion of the State of Arizona within the limits of said projects. In order to have a successful farm operation these petitioners and others of their class are required to irrigate the lands which they farm. These lands are located in an arid climate where precipitation is insufficient to satisfy the need for water for agricultural purposes. No substantial source of water except the Colorado River System is available to these petitioners to irrigate their lands. Presently they are using waters from the underground water supply tapped by wells or are using waters from the tributaries of the Colorado River System which are insufficient in amount to main-

tain their present farming. In recent years because the draft on the underground water is greatly in excess of the recharge, the well depths are increasing and the well discharges are decreasing. Because of such diminution of the underground water supply or insufficiency of such tributary water supply the farms of these petitioners and of others of their class, which are presently cultivated, will go out of cultivation unless additional water from the main stream of the Colorado River is obtained for these lands.

VIII

The water needed by petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporaton, and others in the same class to preserve their existing agriculture is not available to them or to the State of Arizona under the Colorado River Compact. This compact, even if interpreted by the Court in the manner requested by Arizona in its Bill of Complaint, does not provide for Arizona or for these petitioners or others in the same class any water to preserve their existing agriculture nor does Arizona's Bill of Complaint allege or seek to quiet title to the water heretofore appropriated for the lands of petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and others of their class under and by virtue of the applications referred to hereinabove.

IX

Petitioners Perry C. Green, Melvin A. Green,

Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of the same class, are the owners of desert land within the projects mentioned hereinabove. These lands are exceedingly fertile and feasible of irrigation, and when irrigated will be exceedingly productive. Said lands can be reclaimed and put under irrigation under the projects filed upon and with the waters appropriated by the applicant, the said Fred T. Colter and his successor, the petitioner, Sidney Kartus, acting for and on behalf of said petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of the same class. The Colorado River Compact, even if interpreted as requested by Arizona in its Bill of Complaint, does not provide for Arizona or for these petitioners or others in the same class any waters to reclaim their land nor does Arizona's Bill of Complaint allege or seek to quiet title to the waters heretofore appropriated for the lands of petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of their class under said applications.

X

Arizona's Bill of Complaint pleads only such rights to Colorado River water, if any, which the State has under the Colorado River Compact. This compact purports to provide for an "equitable division and apportionment of the use of the

waters of the Colorado River System".[3] These petitioners earnestly submit that said compact is not equitable; that it does not equitably apportion the waters of the Colorado River; that it is therefore invalid; that it unlawfully, unconstitutionally, without compensation and without due process of law, attempted and is attempting to take away from these petitioners and others of their classes, the use of waters previously appropriated under said prior and superior applications by the said Fred T. Colter and his successor, the petitioner, Sidney Kartus, the use of which waters equitably belong to Arizona and to petitioners for whom they were and are appropriated under and by virtue of the laws of the State of Arizona. Said compact attempts to contravene and destroy said prior applications. The compact is inequitable for the following additional reasons:

1. It does not consider prior appropriations of the waters of the Colorado River System.

2. The proportion of each state which drains into the river was not considered in making the apportionment.

3. The compact failed to take into account other river waters available to the other basin states, while Arizona has no rivers except the Colorado River System.

4. It did not provide for the best development of the river from the standpoint of obtaining the

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3. Article I, Colorado River Compact.

maximum multi-purpose use and conservation of the waters, including the reflow.

5. It attempts to divide water in perpetuity.

6. It did not consider the fact that the best reclamation and power sites in the Colorado River System are located entirely in Arizona or on Arizona's borders.

7. It did not consider that the greatest amount of irrigible lands within the river basin are located within Arizona.

8. It permits unlimited exportation of Colorado River System waters outside of the river's basin, contrary to conservation principles, and to the detriment of prior appropriations and the established and potential economy of Arizona and the entire river basin.

9. It did not consider that the prior appropriations and projects under the Colter Filings do not interfere with the legitimate rights of other states with lands in the river basin.

XII

The claims of petitioners are inextricably interwoven with those being made by Arizona through its Attorney General and the Arizona Interstate Stream Commission in its Bill of Complaint. Said Bill of Complaint seeks to have the Court decree that the Colorado River Compact is a valid, equitable apportionment of the waters of the Colorado River System, and that Arizona and water users therein including petitioners are entitled to only

such waters from the Colorado River System as are apportioned to it by the Colorado River Compact as it may be interpreted by this Court. Thus, it seeks to destroy the greater claims of petitioners based on the prior appropriations hereinabove set forth, which prior appropriations are in accord with a proper equitable apportionment and maximum, beneficial, economical use of the waters of the Colorado River. Unless petitioners are permitted to intervene, the Court will not be fully informed, or informed at all, of their claims which are inextricably interwoven with and, as set forth above, seriously affected by the claims presently being made in Arizona's Bill of Complaint.

XII

Petitioners have no adequate remedy at law or otherwise to prevent this attempted destruction of these property rights, rights which in the arid west are of inestimable value. Petitioner, Sidney Kartus, requested the Attorney General of the State of Arizona and the counsel for the Interstate Stream Commission to set forth in Arizona's Bill of Complaint the said applications and claimed property rights of these petitioners so that these matters could be adjudicated by the Court. His requests have been denied and the Bill of Complaint in no way mentions or pleads the applications and claims of these petitioners.

XIII

Petitioners have taken and are taking steps to perfect the water rights hereinabove mentioned. Plans have been formulated and efforts have been

and are being made by petitioners for the formation of an irrigation and power district to proceed with necessary construction work. The total cost of such a project will be a minimum of several hundred million dollars. In order to facilitate the obtaining of financial assistance for this construction under terms and conditions which are feasible, it is necessary that title of petitioners to the water rights herein claimed be confirmed and quieted. This is possible only through a decree of the Court.

XIV

In addition to the reasons hereinabove set forth, petitioners respectfully submit that a final solution to the long-standing controversy relating to the division of the waters of the Colorado River requires all claims within each state to be set forth. Only such an adjudication could fully inform the parties and the United States Government, whose interests in this matter are set forth in its Motion for Leave to Intervene, of their respective rights in the Colorado River. A suit which omits the claims of persons or states whose claims are interwoven with those being litigated and which asks only for the interpretation of a compact, can have no finality. The controversy which has continued unabated over twenty years and which has already resulted in three previous attemps to obtain relief from this Court[4] can only be finally laid to rest if the Court permits and re-

4. Arizona vs. California, 283 U. S. 423 (1931); Arizona vs. California, 292 U. S. 341 (1934); Arizona vs. California, 298 U. S. 558 (1936).

quires all claims to the use of waters of the Colorado River System to be brought before it on the factual evidence thereof. Petitioners submit that it is of great general interest and concern whether the stability of water rights existing under State and Federal Constitutions may be destroyed at any time by an inequitable interstate compact, from which any state party to it is free to withdraw at will. Petitioners further submit that if the court interprets only the compact, complaining parties and the many thousands of persons in a like position would not be represented because of failure or refusal of state officials to plead their property rights.

WHEREFORE, petitioners respectfully pray this Court to permit them to file a Petition for Intervention in this case.

Samuel Langerman

SAMUEL LANGERMAN
Attorney for Petitioners

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IN THE

Supreme Court of the United States

October Term, 1952

No. 10 Original

STATE OF ARIZONA

Complainant

v

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

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Chief Counsel,
Arizona Interstate Stream Commission
BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission
PERRY M. LING
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Arizona Interstate Stream Commission
ROSS F. JONES
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Chief Assistant Attorney General of Arizona

COMPLAINANT'S OBJECTIONS TO MOTION ON BEHALF OF SIDNEY KARTUS ET AL. FOR LEAVE TO FILE PETITION TO INTERVENE

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Defendants

COMPLAINANT'S OBJECTIONS TO MOTION ON BEHALF OF SIDNEY KARTUS, ET AL. FOR LEAVE TO FILE PETITION TO INTERVENE

The State of Arizona, appearing by its duly appointed attorneys, respectfully files herewith its objections to motion on behalf of Sidney Kartus, et al. for leave to file petition to intervene.

ISSUE I

The State of Arizona has a right to appear as *parens patriae* of its citizens regardless of the rights of individual and private appropriators or users of waters of interstate streams, inasmuch as a determination of the rights of the State of Arizona will necessarily determine petitioners' rights.

ISSUE II

The enactment of Section 75-2201 et seq, A.C.A. 1939, 1952 Cumulative Supplement, establishes the Arizona Interstate Stream Commission and empowers said Commission to prosecute and defend all rights, claims and privileges of the State respecting interstate streams and by virtue of said legislative enactment any other person or officer is prevented from instituting an action which relates to interstate streams.

ISSUE III

The Eleventh Amendment to the Constitution of the United States prevents petitioners from intervening.

ARGUMENT IN SUPPORT OF OBJECTIONS

ISSUE I

The petitioners should not be allowed to intervene in this action for the reason that any decree entered by the Court will operate as an adjudication of the petitioners' rights. All persons within the confines of a state are bound by an interstate compact which apportions water among the several states.

The outstanding case determined by the Supreme Court of the United States is *Hinderlider, State Engineer, et al. v. La Plata River & Cherry Creek Ditch Co.*, (1937) 304 U.S. 92. This was a case determined on an appeal from the Supreme Court of the State of Colorado. One of the points determined in that case was the effect of an interstate compact on an appropriator of water within the State of Colorado who had by decree of the Colorado Court been allocated a certain

amount of water from the La Plata River. The decree of the state court establishing the water right was entered in 1898 and a compact was signed between the States of Colorado and New Mexico with the permission of Congress in 1923. The Compact did not apportion sufficient water to the State of Colorado to take care of the 1898 Court decree. One of the contentions was that the State could not by compact interfere with the decree of the Colorado Court rendered in 1898. The Court held (Page 106) as follows:

"Whether the apportionment of the water of an interstate stream be made by compact between the upper and lower States with the consent of Congress or by a decree of this Court, the apportionment is binding upon the citizens of each State and all water claimants, even where the State had granted the water rights before it entered into the compact. That the private rights of grantees of a State are determined by the adjustment by Compact of a disputed boundary was settled a century ago in *Poole v. Fleeger,* 11 Pet. 185, 209, where the Court said:

'It cannot be doubted, that it is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between their respective territories; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the true and real boundaries. This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the States of this Union; unless it has been surrendered under the Constitution of the United States. So far from there being any pretense of such a general surrender of the right, it is expressly recognized by the Constitution and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress'."

In addition the Court cited *Garcia v. Lee*, 12 Pet. 511, 521; *Rhode Island v. Massachusetts*, 12 Pet. 657, 725; *Coffee v. Groover*, 123 U.S. 1, 29, 30, 31; *Virginia v. Tennessee*, 148 U.S. 503, 525; *Wyoming v. Colorado*, 286 U.S. 494, 508.

In the case of *Nebraska v. Wyoming*, (1935) 295 U.S. 40, Nebraska, by leave of Court, filed a bill of complaint against Wyoming seeking an equitable apportionment as between the two States of the waters of the North Platte River. The State of Wyoming presented a motion to dismiss, asserting that the Secretary of the Interior was an indispensable party. In disposing of the question the Court held:

> "* * * The motion asserts that the Secretary of the Interior is an indispensable party. The bill alleges, and we know as matter of law, that the Secretary and his agents, acting by authority of the Reclamation Act and supplementary legislation, must obtain permits and priorities for the use of water from the State of Wyoming in the same manner as a private appropriator or an irrigation district formed under the state law. *His rights can rise no higher than those of Wyoming, and an adjudication of the defendant's rights will necessarily bind him. Wyoming will stand in judgment for him as for any other appropriator in that state. He is not a necessary party.* * * *"
> (emphasis supplied)

Subsequently the Platte Valley Public Power & Irrigation District filed a motion for leave to intervene which motion was denied by memorandum decision of this Court. 296 U.S. 548. Similarly this Court in *Texas v. New Mexico*, 304 U.S. 551 denied a motion for leave to file a brief amicus curiae.

The effect of a decree of the Supreme Court of the United States in a suit of original jurisdiction between States, as concerns private claimants of water rights within the respective states was determined in the case of *State of Wyoming v. State of Colorado* (1932) 286 U.S. 494. This was a suit brought by the State of Wyo-

ming against the State of Colorado to enforce a prior decree of the Supreme Court rendered in an earlier suit between the two States respecting their relative rights to divert and put to beneficial use the waters of the Laramie River, a stream rising in Colorado and flowing northward into Wyoming. The Court in this case used the following language:

> "* * * (3) But it is said that water claims other than the tunnel appropriation could not be, and were not, affected by the decree, because the claimants were not parties to the suit or represented therein. In this the nature of the suit is misconceived. It was one between states, each acting as a quasi sovereign and representative of the interests and rights of her people in a controversy with the other. Counsel for Colorado insisted in their brief in that suit that the Controversy was 'not between private parties' but 'between the two sovereignties of Wyoming and Colorado'; and this court in its opinion assented to that view, but observed that the controversy was one of immediate and deep concern to both states and that the interests of each were indissolubly linked with those of her appropriators. 259 U.S. 468, 42 S. Ct. 552, 66 L. Ed. 999. Decisions in other cases also warrant the conclusion that the water claimants in Colorado, and those in Wyoming, were represented by their respective states and are bound by the decree.* * *"

In the present controversy, the State of Arizona will stand in judgment for the petitioners, for their rights can rise no higher than the rights of the State of Arizona and the effect of any judicial determination of this controversy between the two states will be binding upon petitioners as individual citizens. Citations of various Supreme Court cases which follow this principle are:

Missouri v. Illinois, 180 U.S. 208, 241;

Kansas v. Colorado, 185 U.S. 125, 142; Id., 206 U.S. 46, 49;

Georgia v. Tennessee Copper Co., 206 U.S. 230, 237, 11 Ann. Cas. 488;

Hudson County Water Company v. McCarter, 209 U.S. 349, 355, 14 Ann. Cas. 560;

Pennsylvania v. West Virginia, 262 U.S. 533, 591, 595, 32 A.L. R. 300;

North Dakota v. Minnesota, 263 U.S. 365, 373;

Rhode Island v. Massachusetts, 12 Pet. 657, 748;

Florida v. Georgia, 17 *How.* 478, 494, 510, 522.

The right of a State, in its sovereign or quasi sovereign capacity to represent its citizens, has been ruled upon in many instances from early English law to the present date. One of the most concise statements of this rule is found in the case of *Commonwealth of Kentucky v. State of Indiana, et al* (1930) 281 U.S. 163, where the Commonwealth of Kentucky filed a bill of complaint against the State of Indiana, seeking to restrain the breach of a contract and for specific performance of said contract. In passing upon the right of the State to represent its citizens the Court held:

"* * * (2) *A state suing, or sued, in this court, by virtue of the original jurisdiction over controversies between states, must be deemed to represent all its citizens.* The appropriate appearance here of a state by its proper officers, either as complainant or defendant, is conclusive upon this point. Citizens, voters, and taxpayers, merely as such, of either state, without a showing of any further and proper interest, have no separate individual right to contest in such a suit the position taken by the state itself. Otherwise, all the citizens of both states, as one citizen, voter, and taxpayer has as much right as another in this respect, would be entitled to be heard. * * *" (emphasis supplied)

In *State of Kansas v. Colorado*, (1902) 185 U.S. 125, at page 142, the Court, in speaking of its ruling in *State of Missouri v. Illinois*, (1900) 180 U.S. 208, said:

"As will be perceived, the court there ruled that the mere fact that a state had no pecuniary interest in the controversy would not defeat the original jurisdiction of this court, which might be invoked by the state as *parens patriae,* trustee, guardian or representative of all or a considerable portion of its citizens; and that the threatened pollution of the waters of a river flowing between states, under the authority of one of them thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justiciable under the Constitution."

In *State of Wyoming v. Colorado,* (1922) 259 U.S. 419, it was contended, among other things, that actually the real parties in interest were the private appropriators of the water. As to that contention, the Court said, 259 U.S. at page 468:

"As respects Wyoming, the welfare, prosperity, and happiness of the people of the larger part of the Laramie Valley, as also a large portion of the taxable resources of two counties, are dependent on the appropriations in that state. Thus the interests of the state are indissolubly linked with the rights of the appropriators. To the extent of the appropriation and use of the water in Colorado a like situation exists there."

In *State of Kansas v. Colorado* (1907), 206 U.S. 46, at page 99, the Court said, in speaking of the status of Kansas in that suit:

"It is not acting directly and solely for the benefit of any individual citizen to protect his riparian rights. Beyond its property rights it has an interest as a state in this large tract of land bordering on the Arkansas river. Its prosperity affects the general welfare of the state. The controversy rises, therefore, *above a mere question of local private right and involves a matter of state interest, and must be con-*

sidered from that standpoint. State of Georgia v. Tennessee Copper Co., 206 U.S. 230, (11 Ann. Cas. 488)." (emphasis supplied)

See also:

State of Georgia v. Tennessee Copper Co., (1907), 206 U.S. 230-237, 11 Ann. Cas. 488;

People of State of New York v. New Jersey (1921) 256 U.S. 296-301;

State of New Jersey v. New York (1931), 283 U.S. 336, 342;

State of Wyoming v. Colorado (1936), 298 U.S. 573, 585;

State of Colorado v. Kansas (1934), 320 U.S. 383, 394.

The State, acting in its capacity as *parens patriae,* through the Arizona Interstate Stream Commission, adequately represents all claimants of water rights within the State, and none of such claimants should be made party to this action. Were the rule otherwise, it would leave the way open for hundreds, even thousands of other persons to intervene in the instant case seeking to have their various individual rights determined by the Supreme Court. This would create an intolerable situation and place so many litigants before the Court that substantial justice could not be accomplished.

Issue II

The State of Arizona must be represented by an agent or agency authorized to act and petitioners have nowhere shown that the Legislature has empowered them to act on behalf of the State. Inasmuch as the petitioners' rights are merged with those of the State of Arizona, their attempt to intervene actually places them in a position where they are asserting the rights of the State. This they may not do. The only properly authorized agency is the Arizona Interstate Stream Commission. In *People v. Navarre,* 22 Mich. 1 an action of debt had been commenced in the name of the

State without authority of the officer authorized by law to commence such action in the name of the State. In the course of the opinion it is said:

> "But the plaintiff in error (the people) can only appear in this class of cases by some public officer designated by law. They cannot be placed in the attitude of litigants in the courts at the will and by action of private parties or attorneys. The State can only be recognized by the courts as a suitor in legal proceedings through the agents or representatives appointed by law to speak and act in its name in the matter in hand; and, unless in the given case the proper agent or representative is present, in legal contemplation the State is not present; and this presence of such agent or representative can be made known and attested only by the record. * * * While, therefore, the People are designated as plaintiffs in error in the papers before us, they are not present, indeed are not, according to legal apprehension, parties at all."

The legislative enactment by which this Commission is created is found in Section 75-2202, A.C.A. 1939, 1952 Cumulative Supplement, which provides as follows:

> "75-2202. *Arizona interstate stream commission.*—The Arizona interstate stream commission is created as a body corporate, with the right to sue and be sued in its own capacity, and with all corporate rights and privileges of general bodies corporate except as otherwise provided by this act (SS 75-2201 — 75-2211). It shall have power, jurisdiction and authority to:
>
> 1. Prosecute and defend all rights, claims and privileges of the state respecting interstate streams.
> * * *"

The enactment of the above statute prevents any other person, including petitioners, from instituting or maintaining an action which relates to interstate streams. The general rule concerning the authority of

a certain officer or public body to institute or defend actions is set out in 59 C.J. 322, paragraph 480. This paragraph reads, in part, as follows:

> "Generally, therefore, any person expressly authorized by statute may institute, or defend, an action on the state's behalf; and when the legislature has authorized an action to be instituted or defended by a particular person or officer, the suit may not be instituted or defended, by another;"

It appears that the great weight of authority, if not the entire weight of authority, is in support of this general rule. In the case of *State v. Pure Oil Co.* (Okla. 1934) 37 P. 2d 608, a statutory enactment provided that "The Bank Commissioner shall have power and authority to institute and prosecute all suits necessary for the liquidation of the assets of the insolvent corporations taken over by him and such suits shall be brought in the name of the State of Oklahoma, on the relation of the Bank Commissioner." A question was raised as to whether the power thus conferred on the Bank Commissioner was exclusive. In passing upon the question the Court held:

> "It is the general rule of law that, when the legislative branch of the government has declared that certain classes of cases shall be prosecuted in the name of the state by designated persons or officers, such cases must be maintained by the person or officer designated and cannot be maintained by any other person or officer."

The Oklahoma Court in *Oklahoma Benefit Life Ass'n v. Bird* (Okla. 1943) 135 P. 2d 994, re-affirmed the general rule as applied to the power of the Insurance Commissioner to institute judicial proceedings. The Court used the following language:

> "And the general rule is that where the Legislature has declared that certain classes of cases shall be prosecuted in the name of the state by designated persons or officers, such cases cannot be maintained by any other person."

See also *Commonwealth v. Helm*, 163 Ky. 69, 173 S.W. 389.

The propriety of this rule is obvious. If it were otherwise, private citizens of the State could flood the courts with litigation on a certain problem, although the duty is lodged with regularly selected state officials or in officers or corporate bodies whose duties have been clearly defined by statute. As was stated in *State v. Pure Oil Co., supra,* "The necessity of orderly and harmonious government demands that the rule be observed."

Issue III

The Eleventh Amendment to the Constitution of the United States provides:

> "*(Suits against states — Restriction of judicial power.)*—The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

The question as to whether or not a citizen of a State may sue one of the states of the Union has been determined in numerous cases. One of the leading cases in the field is *Monaco v. Mississippi* (1934) 292 U.S. 313. The Court in determining the effect of the Eleventh Amendment used the following language:

> "3. *To suits against a State, without her consent, brought by citizens of another State or by citizens or subjects of a foreign State, the Eleventh Amendment erected an absolute bar.* Superseding the decision in *Chisholm v. Georgia*, 2 Dall. 419, 1 L. ed. 440, supra, the Amendment established in effective operation the principle asserted by Madison, Hamilton, and Marshall in expounding the Constitution and advocating its ratification. The 'entire judicial power granted by the Constitution' does not embrace authority to entertain such suits in the absence of the State's consent. Re New York, supra, (256 U.S. 497, 65 L. ed.

1060, 41 S. Ct. 588); *Missouri v. Fiske,* 290 U.S. 18, 25, 26, ante, 25, 54 S. Ct. 18." (emphasis supplied).

It is apparent from the Eleventh Amendment that its prohibitory effect extends to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State. The question presents itself as to whether or not an intervener in a case is in the position of one who commences or prosecutes a case. 30 C.J.S. 608, paragraph 163 states the general rule as to the effect of an intervention in the following language:

"An intervener by leave of court becomes a party for all purposes of the suit as though originally a party."

In support of the general rule, the District Court for the Southern District of New York, *In re Raabe, Glissman & Co.* (1947) 71 F. Supp. 678, states at page 680 as follows:

"(1, 2) Under Rule 24 of the Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, *an intervenor in an action or proceeding is, for all intents and purposes, an original party.* * * *" (emphasis supplied)

See also *Commercial Electrical Supply Co. v. Curtis* (1923) 288 F. 657, where the Circuit Court of Appeals laid down the following rule at page 659:

"(1) It is the general rule that one who voluntarily intervenes in a suit in equity thereby becomes a party to the suit, is in the same situation, bound by the same orders and decrees, and subject to the same estoppels, as though he had been a party from the commencement thereof. *Frank v. Wedderin,* 68 Fed. 818, 822, 823, 16 C.C.A. 1; *Swift v. Black Panther Oil & Gas Co.* (8th C.C.A.) 244 Fed. 20, 28, 29, 156 C.C.A. 448; *Bowdoin College v. Merritt* (C.C.) 59 Fed. 6. 8; *Jack & Toner v. D. M. & Fort Dodge Ry. Co.,* 49 Iowa 627, 629; 2 Foster, Federal Practice, p. 1313, S. 259d. * * *"

The petitioners if allowed to intervene would become original parties in the instant case and *in effect, would be commencing or prosecuting a suit against California, which is prohibited by the Eleventh Amendment, supra.*

Should petitioners be allowed to intervene the State of Arizona would be suing to enforce individual rights of the petitioners and this, also, would be in violation of the Eleventh Amendment. Such circumstances should be distinguished from the right of a State to represent all of its citizens as *parens patriae*. This distinction has been brought out in the case of *State of North Dakota v. State of Minnesota* (1923) 263 U.S. 365. In that case North Dakota sought $5,000 for itself and $1,000,000 for its inhabitants, from the State of Minnesota. Recovery was held to be forbidden by the Eleventh Amendment inasmuch as the State was seeking relief for its individual inhabitants.

Conclusion

Whether to permit intervention in any case is a matter which lies within the sound discretion of the Court. As a general rule only those who have rights which are not being adequately protected in the proceedings are permitted to intervene.

Where a person is already represented in the proceedings the courts universally refuse intervention.

The State of Arizona acts as representative of all of its citizens in this litigation and its legislature has by proper statute created the Arizona Interstate Stream Commission and given to it the exclusive right to prosecute and defend all rights, claims and privileges of the State respecting interstate streams.

The granting of petitioner's motion would constitute a violation of the Eleventh Amendment to the Constitution of the United States. For the foregoing reasons the motion for leave to file a petition to intervene should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1952
No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

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APPENDIX NO. 1

THE COLORADO RIVER COMPACT

(Text)

November 24, 1922

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact under the Act of Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, Page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel	for the State of Arizona
W. F. McClure	for the State of California
Delph E. Carpenter	for the State of Colorado
J. G. Scrugham	for the State of Nevada
Stephen B. Davis, Jr.	for the State of New Mexico
R. E. Caldwell	for the State of Utah
Frank C. Emerson	for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the

protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

As used in this compact:—

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin,

and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggrgate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River

System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control, by any State within its boundaries of the appropriation, use and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, con-

sumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

DONE at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. One Thousand Nine Hundred and Twenty-two.

(Signed) W. S. NORVIEL
(Signed) W. F. McCLURE
(Signed) DELPH E. CARPENTER
(Signed) J. G. SCRUGHAM
(Signed) STEPHEN B. DAVIS, JR.
(Signed) R. E. CALDWELL
(Signed) FRANK C. EMERSON

APPROVED:
(Signed) HERBERT HOOVER.

APPENDIX NO. 2

THE BOULDER CANYON PROJECT ACT

Act of December 21, 1928
45 Stat. 1057

CHAP. 42. An Act To provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River compact, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures

to be reimbursable, as provided in the reclamation law, and shall not be paid out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however*, That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, and other property necessary for said purposes.

Sec. 2. (a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this Act. All revenues received in carrying out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of

the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest during construction upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

(d) The Secretary of the Treasury shall charge the fund as of June 30 in each year with such amount as may be necessary for the payment of interest on advances made under subdivision (b) at the rate of 4 per centum per annum accrued during the year upon the amounts so advanced and remaining unpaid, except that if the fund is insufficient to meet the payment of interest the Secretary of the Treasury may, in his discretion, defer any part of such payment, and the amount so deferred shall bear interest at the rate of 4 per centum per annum until paid.

(e) The Secretary of the Interior shall certify to the Secretary of the Treasury, at the close of each fiscal year, the amount of money in the fund in excess of the amount necessary for construction, operation, and maintenance, and payment of interest. Upon receipt of each such certificate the Secretary of the Treasury is author-

ized and directed to charge the fund with the amount so certified as repayment of the advances made under subdivision (b), which amount shall be covered into the Treasury to the credit of miscellaneous receipts.

Sec. 3. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate $165,000,000.

Sec. 4 (a). This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree

irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty

or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada.

(b) Before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the provisions of this Act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 for such works, together with interest thereon made reimbursable under this Act.

Before any money is appropriated for the construction of said main canal and appurtenant structures to connect

the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this Act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona 18¾ per centum of such excess revenues and to the State of Nevada 18¾ per centum of such excess revenues.

Sec. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (h) of section 4.

Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

After the repayments to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress.

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery.

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers, and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be

determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

(b) The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

(c) Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Water Power Act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants.

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however,* That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision, necessary to enable the applicant to utilize such water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determined by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

(d) Any agency receiving a contract for electrical energy equivalent to one hundred thousand firm horsepower, or more, may, when deemed feasible by the said Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts hereunder for less than the equivalent of twenty-five thousand firm horsepower, upon application to the Secretary of the Interior made within sixty days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be constructed by the former for carrying such energy (not exceeding, however, one-fourth the capacity of such line), upon payment by such other agencies of a reasonable share

of the cost of construction, operation, and maintenance thereof.

The use is hereby authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

Sec. 6. That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same except as herein otherwise provided: *Provided, however*, That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provision of section 5 of this Act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal Water Power Act, so far as applicable, respecting maintenance of works in condition of

repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits, recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this Act or penalizing failure to comply with such regulations or with the provisions of this Act. He shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer.

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal Water Power Act upon or affecting the Colorado River or any of its tributaries, except the Gila River, in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this Act shall become effective as provided in section 4 herein.

Sec. 7. That the Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him. The said districts or other agencies shall have the privi-

lege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost of construction thereof.

Sec. 8. (a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees

and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided*, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

Sec. 9. That all lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute

revenue from said project and be covered into the fund herein provided for: *Provided*, That all persons who have served in the United States Army, Navy, or Marine Corps during the war with Germany, the war with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Navy Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4, Act of December 5, 1924 (Forty-third Statutes at Large, page 702); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this Act: *Provided further*, That in the event such an entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be open to entry, subject to the preference in this section provided.

Sec. 10. That nothing in this Act shall be construed as modifying in any manner the existing contract, dated October 23, 1918, between the United States and the Imperial Irrigation District, providing for a connection with Laguna Dam; but the Secretary of the Interior is authorized to enter into contract or contracts with the said district or other districts, persons, or agencies for the construction, in accordance with this Act, of said canal and appurtenant structures, and also for the operation and maintenance thereof, with the consent of the other users.

Sec. 11. That the Secretary of the Interior is hereby authorized to make such studies, surveys, investigations, and do such engineering as may be necessary to determine the lands in the State of Arizona that should be embraced within the boundaries of a reclamation project, heretofore commonly known and hereafter to be known as the Parker-Gila Valley reclamation project, and to recommend the most practicable and feasible method of irrigating lands within said project, or units thereof, and the cost of the same; and the appropriation of such sums of money as may be necessary for the aforesaid purposes from time to time is hereby authorized. The Secretary shall report to Congress as soon as practicable, and not later than December 10, 1931, his findings, conclusions, and recommendations regarding such project.

Sec. 12. "Political subdivision" or "political subdivisions" as used in this Act shall be understood to include any State, irrigation or other district, municipality, or other governmental organization.

"Reclamation law" as used in this Act shall be understood to mean that certain Act of the Congress of the United States approved June 17, 1902, entitled "An Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and the Acts amendatory thereof and supplemental thereto.

"Maintenance" as used herein shall be deemed to include in each instance provision for keeping the works in good operating condition.

"The Federal Water Power Act," as used in this Act, shall be understood to mean that certain Act of Con-

gress of the United States approved June 10, 1920, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes," and the Acts amendatory thereof and supplemental thereto.

"Domestic" whenever employed in this Act shall include water uses defined as "domestic" in said Colorado River compact.

Sec. 13. (a) The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.

(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this Act, the Federal Water Power Act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.

(d) The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right of way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries.

Sec. 14. This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern

the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

Sec. 15. The Secretary of the Interior is authorized and directed to make investigation and public reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said States and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colorado River and its tributaries. The sum of $250,000 is hereby authorized to be appropriated from said Colorado River Dam fund, created by section 2 of this Act, for such purposes.

Sec. 16. In furtherance of any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system and to the end that the project authorized by this Act may constitute and be administered as a unit in such control, improvement, and utilization, any commission or commissioner duly authorized under the laws of any ratifying State in that behalf shall have the right to act in an advisory capacity to and in cooperation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4, 5, and 14 of this Act, and shall have at all times access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request.

Sec. 17. Claims of the United States arising out of any contract authorized by this Act shall have priority over all others, secured or unsecured.

Sec. 18. Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement.

Sec. 19. That the consent of Congress is hereby given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this Act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river. Any such compact or agreement may provide for the construction of dams, headworks, and other diversion works or structures for flood control, reclamation, improvement of navigation, division of water, or other purposes and/or the construction of power houses or other structures for the purpose of the development of water power and the financing of the same; and for such purposes may authorize the creation of interstate commissions and/or the creation of corporations, authorities, or other instrumentalities.

(a) Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into.

(b) No such compact or agreement shall be binding or obligatory upon any of such States unless and until it has been approved by the legislature of each of such States and by the Congress of the United States.

Sec. 20. Nothing in this Act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system.

Sec. 21. That the short title of this Act shall be "Boulder Canyon Project Act."

Approved, December 21, 1928.

APPENDIX NO. 3

THE CALIFORNIA LIMITATION ACT

Chap. 16, Calif. Stats. 1929, p. 38

CHAP. 16. An act to limit the use by California of the waters of the Colorado river in compliance with the act of congress known as the "Boulder canyon project act," approved December 21, 1928, in the event the Colorado river compact is not approved by all of the states signatory thereto.

[Approved by the Governor March 4, 1929. In effect August 14, 1929.]

The people of the State of California do enact as follows:

Section 1. In the event the Colorado river compact signed at Santa Fe, New Mexico, November 24, 1922, and approved by and set out at length in that certain act entitled "An act to ratify and approve the Colorado river compact, signed at Santa Fe, New Mexico, November 24, 1922, to repeal conflicting acts and resolutions and directing that notice be given by the governor of such ratifications and approval," approved January 10, 1929, (statutes 1929, chapter 1) is not approved within six months from the date of the passage of that certain act of the congress of the United States known as the "Boulder canyon project act," approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado river compact, then when six of said states, including California, shall have ratified and approved said compact and shall have consented to waive the provisions of the first paragraph of

article eleven of said compact which makes the same binding and obligatory when approved by each of the states signatory thereto, and shall have approved said compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said "Boulder canyon project act," the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming as an express covenant and in consideration of the passage of the said "Boulder canyon project act" that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado river for use in the State of California including all uses under contracts made under the provisions of said "Boulder canyon project act," and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph "a" of article three of the said Colorado river compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

Sec. 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water specified in subdivision 2 of section 4 (*a*) of the said "Boulder canyon project act" and this act shall be so construed.

APPENDIX NO. 4

THE PRESIDENTIAL PROCLAMATION OF JUNE 25, 1929

Act of June 25, 1929
46 Stat. 3000

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
PUBLIC PROCLAMATION

Pursuant to the provisions of Section 4(a) of the Boulder Canyon Project Act approved December 21, 1928 (45 Stat. 1057), it is hereby declared by Public Proclamation:

(a) That the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming have not ratified the Colorado River Compact mentioned in Section 13(a) of said act of December 21, 1928, within six months from the date of the passage and approval of said act.

(b) That the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming have ratified said compact and have consented to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and that each of the States last named has approved said compact without condition, except that of six-State approval as prescribed in Section 13(a) of said act of December 21, 1928.

(c) That the State of California has in all things met the requirements set out in the first paragraph of Section 4(a) of said act of December 21, 1928, necessary to render said act effective on six-State approval of said compact.

(d). All prescribed conditions having been fulfilled, the said Boulder Canyon Project Act approved December 21, 1928, is hereby declared to be effective this date.

In testimony whereof I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the city of Washington this 25" day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-nine, and of the Independence of the United States of America, the One Hundred and Fifty-third.

[Seal]

HERBERT HOOVER

By the President:

HENRY L. STIMSON

Secretary of State.

APPENDIX NO. 5

CONGRESSIONAL AUTHORIZATION OF THE PARKER DAM DIVERSION STRUCTURE AND RATIFICATION OF RELATED CONTRACTS

Act of August 30, 1935
49 Stat. 1028

CHAP. 831. An Act Authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

[Pertinent Section Only, p. 1039]

Sec. 2. That for the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations, and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertakings, the projects known as "Parker Dam" on the Colorado River and "Grand Coulee Dam" on the Columbia River, are hereby authorized and adopted, and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts including contracts amendatory of or supplemental to those hereby validated and ratified. The construction by the Secretary of the Interior of a dam in and across the Colorado River at or near Head Gate Rock, Arizona, and struc-

tures, canals, and incidental works necessary in connection therewith is hereby authorized, and none of the waters conserved, used, or appropriated under the works hereby authorized shall be charged against the waters allocated to the upper basin by the Colorado River compact, nor shall any priority be established against such upper basin by reason of such conservation, use, or appropriation; nor shall said dam, structures, canals, and works, or any of them, be used as the basis of making any such charge, or establishing any such priority or right, and all contracts between the United States and the users of said water from or by means of said instrumentalities shall provide against the making of any such charge or claim or the establishment of any priority right or claim to any part or share of the water of the Colorado River allocated to the Upper Basin by the Colorado River compact, and all use of said instrumentalities shall be in compliance with the conditions and provisions of said Colorado River compact and the Boulder Canyon Project Act.

APPENDIX NO. 6

CONGRESSIONAL RATIFICATION OF SAN DIEGO AQUEDUCT DIVERSION

Act of April 15, 1948
62 Stat. 171

CHAP. 186. An Act relating to the construction and disposition of the San Jacinto-San Vicente aqueduct.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby (1) ratifies the action taken by various departments and agencies in the executive branch of the Government in planning for and proceeding with the construction of an aqueduct running from a connection with the Colorado River aqueduct of the Metropolitan Water District of Southern California near the west portal of San Jacinto tunnel in Riverside County, California, to San Vicente Reservoir in San Diego County, California; (2) authorizes the completion of such aqueduct in accordance with existing Government plans for the completion thereof; and (3) ratifies the action of the Navy Department in disposing of the aqueduct to the city of San Diego, California, pursuant to contract NOy-13300 which provides, among other things, for the leasing of such aqueduct to such city.

Approved April 15, 1948.

APPENDIX NO. 7

CONGRESSIONAL AUTHORIZATION OF SECOND "BARREL" FOR SAN DIEGO

Act of October 11, 1951
65 Stat. 404

CHAP. 494. An Act To authorize the Secretary of the Navy to enlarge existing water-supply facilities for the San Diego, California, area in order to insure the existence of an adequate water supply for naval installations and defense production plants in such area.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of section 3 of this Act, the Secretary of the Navy, under the direction of the Secretary of Defense, is authorized and directed to provide for—

(1) such enlargement of the existing aqueduct extending from the west end of the San Jacinto tunnel of the Metropolitan Water District of Southern California to the San Vicente Reservoir in San Diego County, California, as may be necessary to increase the rated capacity of such existing aqueduct from eighty-five cubic feet per second to not less than one hundred and sixty-five cubic feet per second, or

(2) the construction of a new aqueduct paralleling such existing aqueduct and having a rated capacity of not less than eighty cubic feet per second.

Sec. 2. The use of all water diverted through said works from the Colorado River shall be subject to and controlled by the Colorado River Compact, the Boulder

Canyon Project Act, the California Self-Limitation Statute and the Mexican Water Treaty and shall be included within and shall in no way increase the total quantity of water to the use of which the State of California is entitled and limited by said compact, statutes, and treaty.

Sec. 3. No construction shall be undertaken under the authority of section 1 of this Act and no funds shall be expended for the preparation of plans or specifications for any such construction unless and until the Secretary of the Navy has entered into a contract with the San Diego County Water Authority amending the contract (NOy-13300) of October 17, 1945 (providing for the completion of such existing aqueduct), to provide—

(1) for the computation of the true cost of the work performed under the authority of section 1 of this Act in the same manner as provided for determining true cost in such contract of October 17, 1945;

(2) for the repayment of the true cost of the work performed under the authority of section 1 of this Act, together with interest on such amount computed at the rate certified by the Secretary of the Treasury to be the average rate paid by United States on its long-term loans, within a period of forty years after the completion and delivery to the San Diego County Water Authority of possession of the works constructed under the authority of this Act: *Provided*, That repayment shall be made in annual installments of not less than one-fortieth of the true cost due when computed as herein prescribed plus annually accrued interest;

(3) that the use of all water diverted through said works from the Colorado River shall be subject to and controlled by the Colorado River Compact, the Boulder Canyon Project Act, the California Self-Limitation Statute and the Mexican Water Treaty and shall be included within and shall in no way increase the total quantity of water to the use of which the State of California is entitled and limited by the said compact, treaty, and statutes;

(4) for the conveyance by the United States to the San Diego County Water Authority of title to the works constructed (including all rights-of-way and other interests in land used in connection with such works) under such contract of October 17, 1945, together with the works constructed under the authority of section 1 of this Act, upon repayment of the true cost of such works, including interest, computed as hereinabove set forth; and

(5) that after the effective date of this contract the member agencies of the San Diego County Water Authority, their successors or assigns as the distributors of the water, shall furnish to the Government on a preferential basis and at a rate no higher than that charged other users of comparable quanities of water, a quantity of water sufficient to meet the requirements of Government activities located and to be located in the area served by such agencies.

Sec. 4. For the purpose of enabling him to carry out the provisions of the first section of this Act, the Secretary of the Navy is authorized to acquire lands and rights

pertaining thereto, or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise.

Sec. 5. The United States and the San Diego County Water Authority and their respective permittees, licensees, and contractees and all users and appropriators of water of the Colorado River diverted or delivered through the existing aqueduct and the enlargement or addition thereto shall observe and be subject to the Colorado River Compact, the Boulder Canyon Project Act, the California Self-Limitation Statute and the Mexican Water Treaty in the diversion, delivery, and use of water of the Colorado River, anything in this Act to the contrary notwithstanding, and such condition and covenant shall attach as a matter of law whether or not set out or referred to in the instrument evidencing such permit, license, or contract and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming and the users of water therein or thereunder by way of suit, defense, or otherwise in any litigation respecting the waters of the Colorado River.

Sec. 6. The Secretary of the Navy is authorized to provide for the construction of the whole or any part of the work authorized by the first section of this Act (1) by contract, (2) by the use of facilities and personnel of the Navy Department, or (3) by the use of the facilities and personnel of any other department or agency of the United States with which an agreement may be entered

into to perform or to have performed the whole or any part of such work.

Sec. 7. The appropriation of such sums as may be necessary to carry out the provisions of this Act is hereby authorized.

Sec. 8. This Act and all works constructed hereunder shall be subject to and controlled by the Colorado River Compact dated November 24, 1922, and proclaimed effective by the President June 25, 1929; the Boulder Canyon Project Act approved December 21, 1928; the California Limitation Act approved by the Governor of California March 4, 1929; and no right or claim of right to the use of the waters of the Colorado River shall be aided or prejudiced hereby.

Approved October 11, 1951.

APPENDIX NO. 8

GENERAL REGULATIONS, SEPTEMBER 28, 1931

United States Department of the Interior,
Office of the Secretary,
Washington, September 28, 1931.

General Regulations

Contracts for the Storage of Water in Boulder Canyon Reservoir, Boulder Canyon Project, and the Delivery Thereof

1. No person shall have or be entitled to have the use for any purpose of the water stored in Boulder Canyon Reservoir except by contract made in pursuance of these regulations. All contracts for delivery of water shall be subject to all the terms and provisions of the Colorado River Compact and of the Boulder Canyon Project Act.

2. The right is reserved to amend or extend these regulations from time to time consistently with said compact and the laws of Congress, as the public need may require.

3. Storage water in Boulder Canyon Reservoir will be delivered upon such terms and conditions as the Secretary may fix from time to time by regulations and contracts thereunder. Water so contracted for may be delivered at such points on the river as may be agreed upon for irrigation and domestic uses.

4. Contracts respecting water for irrigation and domestic uses shall be for permanent service, and shall conform to Paragraph a of Section 4 of the Boulder Canyon Project Act.

5. No charge shall be made for water or for the use, storage or delivery of water for irrigation or for water for potable purposes in the Imperial and Coachella Valleys. Charges otherwise shall be fixed by regulation from time to time. Where water is permitted by the Secretary to be taken from the Colorado River from the reservoir above the Hoover Dam, the utilization of the power plant will be impaired to that extent, and the right is reserved to make a higher charge for water taken above the dam, than if delivery is made below the dam.

6. Subject to the provisions of Article 7 of these regulations, deliveries of water to users in California shall be in accordance with the following recommendation of the State Division of Water Resources:

"The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

"Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands.

"Sec. 2. A second priority to Yuma Project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

"Sec. 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the 'Lower Palo Verde Mesa,' adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre-feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

"Sec. 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum.

"Sec. 5. A fifth priority (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

"Sec. 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for

use exclusively on 16,000 acres in that area known as the Lower Palo Verde Mesa, adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

"Sec. 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation.

"Sec. 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of reduced diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

"Sec. 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in

Boulder Canyon Reservoir accumulated to the individual credit of said City and/or said County (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said City and/or said County and such users resulting therefrom.

"Sec. 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusions of a supply for both said District and said City, and either or both may use said apportionments as may be agreed by and between said District and said City.

"Sec. 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

"Sec. 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties."

7. The Secretary reserves the right to contract with any of the allottees above named in accordance with the above stated recommendation, or, in the event that such recommendation as to Palo Verde Irrigation District is superseded by an agreement between all the above allottees or by a final judicial determination, to contract with the Palo Verde Irrigation District in accordance with such agreement or determination; *Provided,* that priorites numbered fourth and fifth in said recommendation shall not thereby be disturbed.

(Signed) RAY LYMAN WILBUR,
Secretary of the Interior.

September 28, 1931.

APPENDIX NO. 9

GENERAL REGULATIONS, APRIL 23, 1930.

The Secretary of the Interior,
Washington, April 23, 1930.

General Regulations

Contracts for the Storage of Water in Boulder Canyon Reservoir, Boulder Canyon Project, and the Delivery Thereof

Storage water in Boulder Canyon Reservoir will be sold upon such terms and conditions as the Secretary may fix from time to time. Water so sold may be delivered at such points on the river as may be agreed upon for irrigation and domestic uses.

Contracts respecting water for domestic uses shall be for permanent service, and shall conform to Paragraph a of Section 4 of the Boulder Canyon Project Act. No charge shall be made for water or for the use, storage or delivery of water for irrigation or for water for potable purposes in the Imperial or Coachella Valleys.

Where water is taken from the Colorado River above the Boulder Canyon Dam, the utilization of the power plant will be impaired to that extent, and the right is reserved to make a higher charge for water taken above the dam, than if delivery is made below the dam.

No person shall have or be entitled to have the use for any purpose of the water stored in Boulder Canyon Reservoir except by contract made in pursuance of these regulations. All purchases of water shall be subject to all

the terms and provisions of the Colorado River Compact and of the Boulder Canyon Project Act.

The right is reserved to amend or extend these regulations from time to time consistently with said compact and the laws of Congress, as the public need may require.

RAY LYMAN WILBUR,
Secretary of the Interior.

APPENDIX NO. 10

THE SEVEN PARTY PRIORITY WATER AGREEMENT

Aug. 18, 1931

AGREEMENT REQUESTING THE DIVISION OF WATER RESOURCES OF THE STATE OF CALIFORNIA TO APPORTION CALIFORNIA'S SHARE OF THE WATERS OF THE COLORADO RIVER AMONG THE VARIOUS APPLICANTS AND WATER USERS THEREFROM IN THE STATE, CONSENTING TO SUCH APPORTIONMENTS, AND REQUESTING SIMILAR APPORTIONMENTS BY THE SECRETARY OF THE INTERIOR OF THE UNITED STATES.

This Agreement, made the 18th day of August, 1931, by and between Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego and County of San Diego;

Witnesseth:

Whereas the Secretary of the Interior did, on November 5, 1930, request of the Division of Water Resources of California a recommendation of the proper apportionments of the water of and from the Colorado River to which California may be entitled under the provisions of the Colorado River Compact, the Boulder Canyon Project Act and other applicable legislation and regulations, to the end that the same could be carried into each and all of the contracts between the United States and applicants for water contracts in California as a uniform clause; and

Whereas the parties hereto have fully considered their respective rights and requirements in cooperation with the

other water users and applicants and the Division of Water Resources aforesaid;

Now, Therefore, the parties hereto do expressly agree to the apportionments and priorities of water of and from the Colorado River for use in California as hereinafter fully set out and respectfully request the Division of Water Resources to, in all respects, recognize said apportionments and priorities in all matters relating to State authority and to recommend the provisions of Article I hereof to the Secretary of the Interior of the United States for insertion in any and all contracts for water made by him pursuant to the terms of the Boulder Canyon Project Act, and agree that in every water contract which any party may hereafter enter into with the United States, provisions in accordance with Article I shall be included therein if agreeable to the United States.

ARTICLE I.

The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands.

Section 2. A second priority to Yuma Project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land

located in said project in California, such waters as may be required by said lands.

Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

Section 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum.

Section 5. A fifth priority, (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation.

Section 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre feet in the aggregate) by reason of reduced diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the

right to make similar arrangements with users in other states, without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

Section 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said City and/or said County (not exceeding at any one time 250,000 acre feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other states without distinction in priority, and to deterimne the correlative relations between the said City and/or said County and such users resulting therefrom.

Section 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said District and said City, and either or both may use said apportionments as may be agreed by and between said District and said City.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

Section 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

ARTICLE II.

That each and every party hereto who has heretofore filed an application or applications for a permit or permits to appropriate water from the Colorado River requests the Division of Water Resources to amend such application or applications as far as possible to bring it or them into conformity with the provisions of this agreement; and each and every party hereto who has heretofore filed a protest or protests against any such application or applications of other parties hereto does hereby request withdrawal of such protest or protests against such application or applications when so amended.

ARTICLE III.

That each and all of the parties to this agreement respectfully request that the contract for delivery of water between The United States of America and The Metropolitan Water District of Southern California under date of April 24, 1930 be amended in conformity with Article I hereof.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized, the day and year first above written. Executed in seven originals.

Recommended for execution.

PALO VERDE IRRIGATION DISTRICT
By ED. J. WILLIAMS,
ARVIN B. SHAW, JR.

IMPERIAL IRRIGATION DISTRICT
By CHAS. L. CHILDERS,
M. J. DOWD.

COACHELLA VALLEY COUNTY WATER DISTRICT
By THOS. C. YAGER,
ROBBINS RUSSEL.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
By W. B. MATTHEWS,
C. C. ELDER.

CITY OF LOS ANGELES
By W. W. HURLBUT,
C. A. DAVIS.

CITY OF SAN DIEGO
By C. L. BYERS,
H. N. SAVAGE.

COUNTY OF SAN DIEGO
By H. N. SAVAGE,
C. L. BYERS.

APPENDIX NO. 11

PALO VERDE WATER DELIVERY CONTRACT WITH THE UNITED STATES

February 7, 1933

Approved as to form:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOULDER CANYON PROJECT

United States and Palo Verde Irrigation District
Contract for Delivery of Water

(1) **This Contract,** made this 7th day of February nineteen hundred thirty-three, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, between **The United States of America,** hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and **Palo Verde Irrigation District,** an irrigation district created, organized and existing under and by virtue of an act of the Legislature of the State of California approved June 21, 1923 (Chapter 452, Statutes of California, 1923), as amended, known as and designated "Palo Verde Irrigation District Act," with its principal office at Blythe, Riverside County, California; hereinafter referred to as the District;

Witnesseth:

Explanatory Recitals

(2) **Whereas,** for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water; and

(3) **Whereas,** after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Hoover Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir; and

(4) **Whereas,** the District is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir, and it is to the mutual interest of the parties hereto that such contract be executed and the rights of the District in and to waters of the river be hereby defined.

(5) **Now, Therefore,** in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by the United States

(6) The United States shall, from storage available in the Boulder Canyon Reservoir, deliver to the District each year at a point in the Colorado River immediately

above the District's point of diversion known as Blythe Intake, (or as relocated within two miles of the present intake) so much water as may be necessary to supply the District a total quantity, including all other waters diverted for use of the District from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, as follows: (Subject to availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act):

> The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:
>
> Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands.
>
> Section 2. A second priority to Yuma Project of the United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.
>
> Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irri-

gation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre-feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

Section 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum.

Section 5. A fifth priority (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adja-

cent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation.

Section 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason or reducing diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

Section 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the

exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said City and/or said County (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulations, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said City and/or said County and such users resulting therefrom.

Section 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said District and said City, and either or both may use said apportionments as may be agreed by and between said District and said City.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

Section 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of

water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the District agrees that he may, contract with any of the allottees above named in accordance with the above stated recommendation. The District reserves the right to establish, at any time, by judicial determination, its rights to divert and/or use water from the Colorado River. In the event the above stated recommendation as to the District is superseded by an agreement between all the above allottees or by a final judicial determination, the parties hereto reserve the right to further contract in accordance with such agreement or such judicial determination: *Provided*, that priorities numbered fourth and fifth shall not thereby be disturbed.

As far as reasonable diligence will permit said water shall be delivered as ordered by the District, and as reasonably required for potable and irrigation purposes within the areas for which the District is allotted water as described in the above stated recommendation. This contract is for permanent water service but is subject to the condition that Hoover Dam and Boulder Canyon Reservoir shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the District and the United States shall observe and be subject to, and controlled by said Colorado River Compact in the construction, management and operation of Hoover Dam, and other works and the storage, diversion, delivery and use of water for the generation of power,

irrigation, and other purposes. The United States reserves the right to temporarily discontinue or reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacements or installation of equipment and/or machinery at Hoover Dam, but as far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspension or reductions in delivery of water occur. This contract neither prejudices nor admits any claim of the District on account of alleged changes in elevation of the river bed howsoever caused, or the effect of such alleged changes on the District's diversion of water delivered hereunder. This contract is without prejudice to any other or additional rights which the District may now have not inconsistent with the foregoing provisions of this article, or may hereafter acquire in or to the waters of the Colorado River.

Receipt of Water by District

(7) The District shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery above stated, and shall at its own expense convey such water to its distribution system, and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

Measurement of Water

(8) The water to be delivered hereunder shall be measured at Blythe Intake by such measuring and controlling

devices or such automatic gauges or both, as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gauges, shall be furnished, installed and maintained by and at the expense of the District, but they shall be and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights-of-way of the District.

Record of Water Diverted

(9) The District shall make full and complete written reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River, and the disposition thereof. The records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

No Charge for Delivery of Water

(10) The District shall not be required to pay to the United States any tolls, rates or charges of any kind for or on account of the storage or delivery of water hereunder.

Inspection by the United States

(11) The Secretary or his representatives, shall at all times have the right of ingress to and egress from all works of the District for the purpose of inspection, repairs and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the District relating to the diversion and distribution of water delivered to it hereunder with the right at any time during office hours to make copies of or from the same.

Disputes or Disagreements

(12) Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within thirty (30) days after their first meeting, such arbitrators not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Rules and Regulations

(13) There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract, governing the diversion and delivery of water hereunder to the District and to other contractors. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the District and opportunity for it to be heard, as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof, or to protect the interests of the United States. The District hereby agrees that in the operation and maintenance of its diversion works at Blythe Intake, all such rules and regulations will be fully adhered to.

Agreement Subject to Colorado River Compact

(14) This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved by the Boulder Canyon Project Act.

Priority of Claims of the United States

(15) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contingent Upon Appropriations

(16) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work contemplated hereby, and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam fund to permit of said allotments. This agreement is also subject to the condition that if for any reason construction of Hoover Dam is not prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon

one (1) year's written notice to the other party hereto.

Rights Reserved Under Section 3737 Revised Statutes

(17) All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract Not Exclusive

(18) Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States or the District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Interest in Contract not Transferable

(19) No interest in this agreement is transferable, and no sublease shall be made, by the District without the written consent of the Secretary, and any such attempted transfer or sub-lease shall cause this contract to become subject to annulment, at the option of the United States.

Member of Congress Clause

(20) No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By RAY LYMAN WILBUR
Secretary of the Interior.

Attest:

NORTHCUTT ELY
RICHARD J. COFFEY
(Seal)

PALO VERDE IRRIGATION DISTRICT,
By L. A. HAUSER
President.

Attest:

O. W. MALMGREN
Assistant Secretary.

Approved as to form: Feb 7 - 1933
RAY LYMAN WILBUR
Ray Lyman Wilbur,
Secretary of the Interior.

State of California, County of Riverside—ss.

I, L. S. Shipley, Secretary of Palo Verde Irrigation District do hereby certify the attached is a true copy of a Contract for Delivery of Water between the United States Department of the Interior, Bureau of Reclamation and Palo Verde Irrigation District dated February 7, 1933 as filed in Minute Book 6 of Palo Verde Irrigation District records, pages 71 to 82 inclusive.

Dated: This 14th day of April, 1953.

[District Seal]

L. S. SHIPLEY,
L. S. Shipley,
Secretary

APPENDIX NO. 12

LAGUNA DAM DIVERSION CONTRACT for IMPERIAL IRRIGATION DISTRICT

Oct. 23, 1918

This Agreement, Made the 23rd day of October, A. D. 1918, by and between the **United States of America** acting in this behalf by Franklin K. Lane, Secretary of the Interior, hereinafter styled the United States, party of the first part, and the **Imperial Irrigation District,** a corporation duly organized and existing under and by virtue of the laws of the State of California, hereinafter styled the District, party of the second part,

Witnesseth:

2. **Whereas,** in connection with the Yuma project, Arizona-California, under the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, and particularly Section 25 of the Act of April 21, 1904 (33 Stat., 224), the United States Reclamation Service has constructed on ~~the~~ Colorado River a dam known as the Laguna Dam and certain auxiliary works, situate about ten miles northeast of Yuma, Arizona, together with a main supply canal extending from said dam southwesterly to a point known as Siphon Drop, situate in Section 10, Township 16 South, Range 22 East, S. B. M.; and

3. **Whereas,** under the aforesaid act of Congress, the United States contemplates the reclamation of 120,000 acres of irrigable land, more or less, under the Yuma project with water from Colorado River diverted at Laguna Dam, and the District desires to change its point

of diversion and secure the right to divert water at said dam for the irrigation of all irrigable land within the boundaries of the District; and

4. **Whereas,** the District is authorized under Chapter 160 of the Statutes of California, 1917, page 243, to contract with the United States for a supply of water for irrigation:

5. **Now, Therefore,** in consideration of the mutual covenants and agreements to be kept and performed and considerations to be paid, as hereinafter provided, it is hereby agreed as follows, to wit:

6. That immediately on the execution of this contract, the District shall proceed with diligence to secure data, which, together with other available data and data to be gathered under the existing cooperative contract dated February 16, 1918, will constitute a complete detailed survey with specifications and estimates of cost for the following:

(a) All necessary works and structures for the diversions of water from the Colorado River at Laguna Dam, thence through said existing main canal of the Yuma project, and sufficient enlargement and modification, including such works or devices as the Secretary of the Interior may require for the purpose of maintaining as near as may be the efficiency of the desilting and sluicing works at Laguna Dam, as such efficiency would be, were the Yuma project fully developed, to divert and carry all water needed by the District for the irrigation of its lands above referred to, without impairing the utilization of said Laguna Dam, main canal, and auxiliary works to the full extent necessary to irrigate the Yuma project when fully developed.

(b) A main canal, entirely within the United States, with all necessary appurtenant structures for the practical operation thereof, of sufficient capacity and proper construction to irrigate all lands in Imperial County, State of California, susceptible of economic irrigation from said canal. Such canal to connect with said main canal of the United States at a point described as Siphon Drop, and thence to connect with the canal system of said District in the United States upon the line located and approved as provided by the terms of the cooperative contract of February 16, 1918, above referred to.

7. Upon the approval by the Secretary of the Interior of the said survey, specifications, and estimates, District will provide for beginning and carrying to completion with due diligence, at the cost of the District, the work of construction and installation at the Laguna Dam and on the main canal, described in and contemplated by this agreement, and the District shall provide proper pecuniary support for the same in advance, in a manner satisfactory to the Secretary of the Interior. All such work shall be carried on in such manner as not to interfere with the proper operation of the Yuma project by the United States, and the District will promptly carry out any measures required by the United States or its authorized agents to avoid or relieve any interference with the delivery of water to the Yuma project during and due to such construction, and will save the United States harmless as to any claims for damages that may be presented by reason thereof.

8. All work of construction and installation, and the materials used therein, shall at all times be subject to the approval of the Secretary of the Interior, and be under the supervision and inspection of his authorized agents and

engineers, to the end that the works shall conform strictly with said surveys and specifications, and such modification thereof as the Secretary of the Interior may approve in writing. In case any of said works are constructed under contract made by the District and are not in accordance with said surveys and specifications, the Secretary may, at his option, replace such unsatisfactory construction work at the expense of the District, or stop said work of construction or cancel this contract, or resort to any other lawful remedy, and the decision of the Secretary of the Interior whether said surveys and specifications or modifications thereof have been complied with shall be final and conclusive. The District shall make complete detailed progress reports of the said construction work upon demand of the Secretary of the Interior. The cost of the inspection on the part of the United States provided by this section shall be paid by the District to the United States upon demand.

9. For the right to use the Laguna Dam, the main canal, and appurtenant structures, and divert water, as herein provided, the District agrees to pay to the United States the sum of $1,600,000 in twenty instalments, the first of which shall become due and payable December 31, 1919, and subsequent instalments annually thereafter. The first four instalments shall each be two per centum, the next two installments each four per centum, and the next fourteen each six per centum of the total amount: Upon failure of the District to make any such payment at the time and in the amount specified, then all rights under this contract shall be at an end, and all payments theretofore made shall become forfeited to the United States as liquidated damages; and as a further consideration for entering into this contract on the part of the

United States, the District hereby releases and relinquishes any and all claims whatsoever for said moneys or any portion thereof so forfeited and paid as liquidated damages; provided, that the Secretary of the Interior may in his discretion extend the time for any such payment upon the payment of seven per cent interest in advance.

10. Subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, the United States shall have and retain perpetually the title to and the complete control, operation, and management of said Laguna Dam, auxiliary works, and enlarged main canal from the dam to and including the Siphon Drop with appurtenant structures as enlarged, including the diversion works at Siphon Drop for the diversion and delivery of water to the Yuma project and the District. The District shall pay to the United States, quarterly, on demand, April 1, July 1, October 1, and December 31, its proportionate share of the cost of operation and maintenance of said dam, auxiliary works, and enlarged main canal for the preceding quarter, such payment by the District to bear the same ratio to the total cost of such operation and maintenance as the amount of water received by the District at the point of delivery to the District's canal at Siphon Drop bears to the total amount of water carried in said main canal at that point plus the amount of water diverted from the canal above the Siphon Drop for use on the Yuma project lands; provided, that such extraordinary expense as may be caused by the operation of such desilting works as may be necessary to as nearly as may be maintained the efficiency of the desilting works at Laguna Dam, as such efficiency would be were the Yuma project fully developed, shall be borne by Imperial Irriga-

tion District. Such extraordinary expense, if any, shall be determined by the Secretary of the Interior. If the District fails to pay to the United States within thirty (30) days after rendition of bill, all operation and maintenance charges as determined by the Secretary of the Interior as they became due, the Secretary of the Interior, in addition to any other remedy which may be available to him for recovery of such charges, is authorized to shut off water from the intake of the District until such time as all sums due have been paid, with interest thereon at the rate of seven per cent per annum, from rendition of bill.

11. The United States reserves the right to arrange for the connection with and use of Laguna Dam on such terms as the Secretary of the Interior may deem expedient, by any other irrigation enterprise, district, corporation, or individual; also of the headworks and main canal and other governmentally constructed works and works constructed jointly by these parties, after proper enlargement and modification, on terms herein stipulated, without, however, impairing the utilization of said dam, canal, and other works to the extent necessary to irrigate the lands within the boundaries of Imperial Irrigation District.

12. The United States reserves the right to develop power with the water in the enlarged main canal down to and including Siphon Drop. All other power possibilities in the main canal down to and including some convenient power site near Pilot Knob shall be developed by the United States to the extent deemed expedient by the Secretary of the Interior, at the joint expense and for the joint benefit of the Yuma project and the Imperial Irrigation District as herein provided. The apportion-

ment of the cost of canal and headworks alterations and enlargement, and of canal extension from the Laguna Dam to the site selected for power development near Pilot Knob, shall be made to the United States (for the Yuma project) and to the Imperial Irrigation District, in the proportion that 2,000 second-feet bears to the total canal enlargement less 2,000 second-feet. The cost of constructing power plants, transmission lines and other power-plant accessories shall be also apportioned to Yuma project and the District, respectively, in the ratio that 8500 water horse power bears to the aggregate water horse power capacity of the plant installed.

The operation and maintenance of any such power plant or plants constructed for joint benefit and the sales of power therefrom shall be under the control of the Secretary of the Interior, and charges for commercial power shall be upon rules adopted by the Secretary of the Interior applying equally to both valleys. Such power as in the judgment of the Secretary of the Interior is necessary for pumping and other operation and maintenance purposes shall be delivered to the Yuma project and to the Imperial Irrigation District at the cost of development thereof, plus 10 per cent, said cost to include interest at 5 per cent per annum on the capital invested in power plants, transmission lines, and power plant accessories, and also a proportional part of the headworks and canal enlargement from Laguna Dam to Pilot Knob, determined by the relation 2,000 second-feet bears to the total enlarged canal capacity and reasonable depreciation, as may be determined by the Secretary of the Interior. The preference right to purchase power developed at the price herein specified shall be given over other uses of power, to the requirements of the Yuma

project (limited to an area not exceeding 120,000 acres) for power to be used in pumping irrigation water. The profits from power sales or power leases shall be divided between the Yuma project and the Imperial Irrigation District in the proportion of their respective investments in power plants, transmission lines, and power plant accessories, and in the canal and headworks alterations, canal enlargement, and canal extension from the Laguna Dam to and including the power house site near Pilot Knob, to be determined by the Secretary. In case capacity be also provided by enlargement for the irrigation of lands in the United States outside of the Imperial Irrigation District, then the cost of enlargement computed as above as chargeable to the Imperial Irrigation District shall be borne by such District and such other lands in the ratio of their respective irrigable acreages. The cost of any works used jointly by several irrigation enterprises below the point near Pilot Knob where power is developed shall be apportioned equitably by the Secretary of the Interior. No water shall be diverted for power purposes from such main canal below Siphon Drop at any time when such water shall be required for irrigation of lands being irrigated therefrom in Imperial County.

13. It is understood and agreed that the connection with Laguna Dam herein provided for is to be constructed as a part of an all-American canal, which the District hereby agrees to build at as early a date as possible and within reasonable time; and when the District shall have completed said all-American canal, it shall have the right to drop water at some other point than the vicinity of Pilot Knob for power development, and in this event agrees to place at the disposal of the United States at Pilot Knob, or some other point to be agreed upon, such

power in addition to that generated at Pilot Knob as in the judgment of the Secretary of the Interior is necessary for pumping and other irrigation operation and maintenance purposes of the Yuma project or any auxiliary thereof, not in excess of 8500 water horse power in the aggregate, at the cost of development thereof at the power house, plus 10 per cent, said cost to include interest at 5 per cent and reasonable depreciation as determined by the Secretary of the Interior. All power development, operation and maintenance of power plants on the all-American canal, and sales of power, shall be under the control of the Secretary of the Interior, and charges for commercial power shall be upon rules adopted by the Secretary of the Interior, applying equally to both Imperial and Yuma Valleys. The profits from commercial power shall be divided between the Imperial Irrigation District and the Yuma project in ratio of their respective investments in power, including the enlargements, alterations, and extensions of the headworks and main canal down to and including the power house site near Pilot Knob, plus investments in the power plants, power house, transmission lines, and other accessories. In dividing profits, the District shall be credited with the net revenue from the amount of power by which the total power output is increased by the all-American canal west of Pilot Knob, which shall be determined by the Secretary of the Interior. Power delivered to Imperial Irrigation District for pumping and other irrigation operation and maintenance purposes shall be delivered on the same terms as power delivered to the Yuma project for said purposes.

14. It is understood and agreed that the Secretary of the Interior shall control the division of water and shall divert for use of the Yuma project or any auxiliary

Changes in District Boundaries

Article 11. After the date of this contract no change shall be made in the boundaries of the District and the Board of Directors shall make no order changing the boundaries of the District, unless and until the Secretary shall assent to such change in writing, and such assent shall have been filed with the Board of Directors of the District; provided, however, that such assent is hereby given for the inclusion of all of the lands indicated on Exhibit "A" referred to in Article 34 hereof.

Terms of Payment

Article 12. The amount herein agreed to be paid to the United States shall be due and payable in not more than forty (40) annual installments commencing with the calendar year next succeeding the year when notice of completion of all work provided for herein is given to the District or under the provisions of Article 10 (a) hereof upon termination of work through failure of Congress to make necessary appropriations therefor. The first five of such annual installments shall each be one per centum (1%) of the amount herein agreed to be paid to the United States; the next ten of such installments shall each be two per centum (2%) of the amount herein agreed to be paid to the United States, and the remainder of such annual installments shall each be three per centum (3%) of the amount herein agreed to be paid to the United States. The sums payable annually as set forth above shall be divided into two equal semi-annual payments, payable on March first and September first of each year; provided, however, that if notice of the completion of work is given to the District subsequent to September first of any year the first semi-annual installment of charges hereunder shall be due and payable on March first of the second succeeding year.

thereof as heretofore or hereafter undertaken by the United States within the present boundaries of the United States and not exceeding 120,000 acres, sufficient water to secure the permanent and economical reclamation thereof; not exceeding, however, one-quarter of the water in the river above Laguna Dam. The foregoing applies only to the natural flow of the Colorado River, and not to storage water, which shall be delivered to the party entitled thereto.

The United States makes no guaranty or representation as to the quantity of water that may be available without storage for delivery to the District under this contract, and shall not be responsible for failure to deliver water under this contract caused by insufficient supply of water in the Colorado River, hostile diversion or drought, interruption made necessary by repairs, nor on account of any valid order or decree of a competent court; nor for any damages by floods, acts of hostility, or unavoidable circumstances, nor for loss of crops or other damage caused by non-delivery of water.

15. It is understood and agreed that the District shall have the right at any time to extend its boundaries within the United States and water additional lands upon payment of same amount per acre as irrigable lands in present Imperial Irrigation District are to pay under terms of this contract. This right to be also available on same conditions to Yuma project, additional to one hundred twenty thousand acres herein mentioned. All proceeds from payments on account of initial connection charges

assessed to and collected from such new lands shall be used under the direction of the Secretary of the Interior for the construction of storage works for the benefit of the lands contributing.

16. This contract shall not become effective until the same shall have been duly ratified and confirmed in accordance with law, by a vote of the people of the Imperial Irrigation District, and unless it shall be so ratified within six months from the date of execution hereof by the Secretary of the Interior, it shall become void and of no further effect.

17. In case of failure on the part of the District to provide for beginning the work of enlargement of the Yuma main canal within two years from the date hereof, the Secretary of the Interior shall have the right to abrogate this contract.

18. No Member of, or Delegate to Congress, or Resident Commissioner after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat., L. 1109).

In Witness Whereof, the parties hereto have caused the execution of these presents as of the day and year first above written.

THE UNITED STATES OF AMERICA
By FRANKLIN K. LANE
Secretary of the Interior.

IMPERIAL IRRIGATION DISTRICT
By LEROY HOLT
President.

[Seal]
Attest
J. H. M. IVER
Secretary.

APPENDIX NO. 13

WATER DELIVERY AND REPAYMENT CONTRACT UNITED STATES & IMPERIAL IRRIGATION DISTRICT

Dec. 1, 1932

Contract for Construction of Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water

Article 1. **This Contract**, made this 1st day of Dec. nineteen hundred thirty-two, pursuant to the Act of Congress approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat., 1057), designated the **Boulder Canyon Project Act**, between **The United States of America**, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and **Imperial Irrigation District**, an irrigation district created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at El Centro, Imperial County, California, hereinafter referred to as the District;

Witnesseth:

Explanatory Recitals

Article 2. **Whereas**, for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the

Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty-million acre-feet of water, and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary is also authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable as provided in the reclamation law; and

Article 3. **Whereas,** after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Hoover Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir; and

Article 4. **Whereas,** there are included within the boundaries of the District areas of private and public lands, and additional private and public lands will by appropriate proceedings be included within the District, and the District is desirous of entering into a contract for the construction of a suitable diversion dam and main canal and appurtenant structures, hereinafter respectively styled Imperial Dam and All-American Canal, located entirely within the United States connecting with the Imperial and Coachella Valleys, and for the delivery to the District of stored water from Boulder Canyon Reservoir; and

Article 5. **Whereas,** the Secretary has determined, upon engineering and economic considerations, that it is advisable to provide for the construction of such diversion dam and main canal and appurtenant structures, and has determined that the revenues provided for by this contract are adequate in his judgment to insure payment of all expenses of construction, operation and maintenance of the said diversion dam, main canal and appurtenant structures in the manner provided in the reclamation law;

Article 6. **Now, Therefore,** in consideration of the mutual convenants herein contained, the parties hereto agree as follows, to wit:

Construction by United States

Article 7. The United States will construct the Imperial Dam in the main stream of the Colorado River at the approximate location indicated on the map marked Exhibit "A" attached hereto and by this reference made a part hereof, and will also construct the All-American Canal and appurtenant structures to the Imperial and Coachella Valleys, the approximate location of said canal to be as shown on the aforesaid Exhibit "A". Said canal shall be constructed to a designed capacity of fifteen thousand (15,000) cubic feet of water per second from and including the diversion and desilting works at said dam to Syphon Drop; thirteen thousand (13,000) cubic feet of water per second from Syphon Drop to Pilot Knob, and ten thousand (10,000) cubic feet of water per second westerly from Pilot Knob to Engineer Station nineteen hundred and seven as said Engineer Station is indicated on said Exhibit "A". Other portions of said canal shall be constructed with such capacities as the Secretary may conclusively determine to be necessary or

advisable upon engineering or economic considerations to accomplish the ends contemplated by this contract; provided, however, that changes in capacities, locations, lengths and alignments, may be made during the progress of the work as may, in the opinion of the Secretary, whose opinion shall be final and binding upon the parties hereto, be expedient, economical, necessary or advisable, except the capacities above indicated from and including the diversion and desilting works at Imperial Dam to Engineer Station nineteen hundred and seven as hereinabove in this article referred to, which capacities may be changed only by mutual agreement between the Secretary and the District. The ultimate cost to the District of the aforesaid works shall in no event exceed the aggregate sum of thirty-eight million, five hundred thousand dollars ($38,500,000). Such cost shall include all expenses of whatsoever kind heretofore or hereafter incurred by the United States from the Reclamation Fund or the Colorado River Dam Fund in connection with, growing out of, or resulting from the consruction of said diversion dam, main canal and appurtenant structures, including but not limited to the cost of labor, materials, equipment, engineering, legal work, superintendence, administration, overhead, any and all costs arising from operation and maintenance of said dam, main canal and appurtenant structures prior to the time that said costs are assumed by the District, damage of all kinds and character and rights-of-way as hereinafter provided. The District hereby agrees to repay to the United States expenditures incurred on account of any and all damages due to the existence, operation or maintenance of the diversion dam and main canal, the incurrence of which increases expenditures by the United States beyond said sum of $38,500,000. The United States will invoke all legal

and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it, without cost to the District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owners of such lands for the value of improvements which may be destroyed; and the District agrees that the United States may include such disbursements in the cost of the work to be performed hereunder. If rights-of-way are required over an existing project of the Bureau of Reclamation, such sum or sums as may be necessary to reimburse the United States on account of the construction charges allocated to irrigable areas absorbed in such rights-of-way shall also be considered as a part of and be included with other costs of the work to be performed hereunder. The District agrees to convey to the United States without cost, unencumbered fee simple title to any and all lands now owned by it, which, in the opinion of the Secretary may be required for right-of-way purposes for the aforesaid diversion dam, main canal and appurtenant structures. Where rights-of-way within the State of California are required for the construction of works herein provided for, and such rights-of-way are not reserved to the United States under acts of Congress, or otherwise, or the lands over which such rights-of-way are required are not then owned by the District, the District agrees that it will, upon request of the Secretary, acquire title to such lands, and in turn convey unencumbered fee simple title thereto to the United States at the actual cost thereof to the District, subject to the approval of such cost by the Secretary.

Assumption of Operation and Maintenance by District

Article 8. Upon sixty (60) days written notice from the Secretary of the completion of construction of the

aforesaid diversion dam, main canal and appurtenant structures, or of any major unit thereof, useful to the District, as determined by the Secretary, whose determination thereof shall be final and binding upon the parties hereto, the District shall assume the care, operation and maintenance of said diversion dam, main canal and appurtenant structures or major units thereof, including Laguna Dam, and thereafter the District shall at its own cost and without expense to the United States care for, operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the diversion, transportation and distribution of water as when received from the United States, reasonable wear and damage by the elements excepted. Operation and maintenance of Imperial Dam by the District is a part of the obligation undertaken under this contract by the District for the transportation and delivery of water to public and Indian lands of the United States, and shall not interfere with the control of such dam by the United States. The United States may, from time to time, in the discretion of the Secretary, resume operation and maintenance of said dam upon not less than 60-days' written notice and require reassumption thereof by the District on like notice. During such times, after completion, as the dam is operated and maintained by the United States, the District shall on March 1 of each year advance to the United States the estimated cost of operation and maintenance for the following twelve months, upon estimates furnished therefor on or before September 1st next preceding. After the care, operation and maintenance of the aforesaid works have been assumed by the District, the District shall save the United States, its officers, agents and employees harmless as to any and all injury and damage to persons and property which may

arise out of the care, operation and maintenance thereof. In the event the United States fails to complete the works herein contemplated and the District fails to elect to make use of the works theretofore partially or wholly constructed, the District shall be fully relieved of any and all responsibility for any further operation and maintenance of the works theretofore taken over by the District for that purpose and thereupon the District shall no longer be responsible for said maintenance or operation or damage to person or property which may arise therefrom.

Keeping Diversion Dam, Main Canal and Appurtenant Structures in Repair

Article 9. Except in case of emergency no substantial change in any of the works to be constructed by the United States and transferred to the District under the provisions hereof shall be made by the District without first having had and obtained the written consent of the Secretary and the Secretary's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto. The District shall promptly make any and all repairs to and replacements of all works constructed hereunder or transferred to it under the terms and conditions hereof, which, in the opinion of the Secretary, are deemed necessary for the proper operation and maintenance of such works. In case of neglect or failure of the District to make such repairs, the United States may, at its option, after reasonable notice to the District, cause such repairs to be made and charge the actual cost thereof, plus fifteen per centum (15%) to cover overhead and general expense, to the District. On or before September first of each calendar year the United States shall give written

notice to the District of the amount expended by the United States for repairs under this article during the twelve-month period immediately preceding. Such cost, plus overhead and general expense as stated above, shall be repaid by the District on March first immediately succeeding.

Agreement by District to Pay for Works Constructed by the United States

Article 10. (a) The District agrees to pay the United States the actual cost, not exceeding thirty-eight million five hundred thousand dollars ($38,500,000), incurred by the United States on account of the aforesaid works, subject, however, to the provisions of Article seven (7) hereof; provided, that should Congress fail to make necessary appropriations to complete the work herein provided for, then the Secretary may, at such reasonable time as he may consider advisable, after Congress shall have failed for five consecutive years to make the necessary appropriations which shall have been annually requested by the Secretary, give the District notice of the termination of work by the United States and furnish a statement of the amount actually expended by the United States thereon. Upon the receipt of such notice by the District the District shall be given two years from and after such receipt of notice to elect whether it will utilize said works theretofore constructed, or some particular part thereof. Such election on the part of the District shall be expressed by resolution of the Board of Directors submitted to the electorate of the District for approval or rejection in the manner provided by law for submission of contracts with the United States. If the District elects not to utilize, or fails within said two-year period to elect to utilize said works or some portion thereof, then the District shall

have no further rights therein and no obligations therefor. If the District elects to utilize said works or a portion thereof, then the reasonable value to the District of the works so utilized not exceeding the actual cost thereof to the United States shall be paid by the District under the terms of this contract: the first payment to be due and payable on the first day of March following the first day of September next succeeding the final determination of the reasonable value to the District of such works, in case no further work is done by the District. Should the District elect to complete the work contemplated by this contract, or some portion thereof, the first payment shall be due and payable on the first day of March following the first day of September next succeeding the date of final completion of the work by the District as determined by the Secretary. In determining the value of such works to the District there shall be taken into account, among other things, the method of financing required and cost of money, so that in no event shall all of the works contemplated by this contract cost the District more than they would have cost the District had they all been constructed by the United States under the terms of this contract. In the event of failure of the parties to agree as to the reasonable value to the District of the works which the District elects to use, the same shall be determined as provided in Article twenty-seven (27) hereof.

(b) The District as a whole is obligated to pay to the United States the full amount herein agreed upon regardless of the default or failure of any tract in the District, or of any landowner in the District, in the payment of the assessments levied by the District against such tract or landowner, and the District shall, when necessary, levy

and collect appropriate assessments to make up for the default or delinquency of any tract of land or of any landowner in the payment of assessments, so that in any event, and regardless of any defaults or delinquencies in the payment of any assessment or assessments, the amounts due or to become due the United States shall be paid to the United States by the District when due.

(c) The District shall be divided into units by the Board of Directors of the District. Said units shall be named, commencing with Imperial Unit, which unit shall comprise the lands of the District as of July 1, 1931. Each of the other units shall be as determined by the Board of Directors of the District and shall be described by legal description of the lands embraced therein or by designation of exterior boundaries or otherwise suitable for identification. Additional lands may be added to any unit herein or hereafter designated.

(d) The lands within each unit as hereinabove provided for will be benefited by the works to be constructed under this contract in the proportion that the area within such unit bears to the total area of the District and the costs of the said works, construction and otherwise, shall be apportioned to and paid by the lands within each unit in that proportion. In levying assessments or other charges to meet the cost of the said works, the Board of Directors of the District shall take into consideration payments to be made under this contract, with proper allowance for existing and anticipated delinquencies and redemptions, in order to provide sufficient funds to meet such payments as same become due and said board shall also take into account all sums expended or to be expended under the contract of October 23, 1918, for the right to connect with the Laguna Dam, the cost of all sur-

veys and investigations and other expenditures properly chargeable as a part of the cost of the said works but which are not included as a part of the construction cost thereof reimbursable to the United States under this contract. While the cost of the said works and other expenditures above mentioned shall be apportioned to the various units according to their respective areas; it is understood that the assessments or other charges to be imposed upon the lands within each respective unit shall be on an ad valorem or other basis as now or may hereafter be provided by law for assessment or imposition of other charges upon lands within irrigation districts. Rates of assessment or schedule in the various units from year to year or from time to time may be different or unequal as between the various units. If the amount collected from the lands in any unit in any year shall be less than the amount apportioned to such unit for that year for such purpose, the deficit shall nevertheless be charged to that unit and any fund or funds of the District from which money may be taken to make up such deficit in order to provide for the payment in full of the obligations of the District, shall be entitled to reimbursement for such money from subsequent collections of unpaid assessments or charges in said unit or from the amounts received for the redemption of lands sold for delinquent assessments or charges or from subsequent or additional levies made on the lands within that unit to provide for such reimbursement.

(e) In the event lands now or hereafter within Coachella Valley County Water District, a county water district organized and existing under the laws of the State of California, are included within Imperial Irrigation District, the said Coachella Valley County Water

District shal have the privilege, at its option, if, as and when authorized to do so by law, to pay to Imperial Irrigation District the total amount of any annual and/or special assessments levied by the last named District upon said lands or any installment of such assessments or any of the several individual assessments or installments thereof, in any case as the same become due and payable. The regular and lawful proceedings, rights and remedies of the last named District shall be in no manner impaired or affected by the provisions of this subarticle. The agreement in this subarticle contained is made expressly for the benefit of said Coachella Valley County Water District.

(f). If for any reason only a part of the works herein contemplated is constructed either by the United States or by the District, then the Board of Directors of the District shall, after public hearing, determine whether or not all of the lands in the District are benefited by the works constructed. If the Board shall find and declare that any certain lands within the District are not benefited by such construction, then no assessments shall thereafter be levied upon such lands for the purpose of meeting the obligations under this contract; and, for the purpose of this subarticle, no land shall be regarded as benefited by the construction of such works until the works contemplated by this contract as indicated on said Exhibit "A" from which water would reasonably be obtained for such lands shall have been constructed.

(g). The District shall have the right to refuse water service to any lands within the District which may at any time be delinquent in the payment of any assessment levied for the purpose of carrying out the provisions of this contract.

Operation and Maintenance Costs

Article 13. Each agency other than the District for which capacity is provided in the works to be constructed hereunder shall bear such proportionate part of the cost of operation and maintenance (including repairs and replacements) of the component parts thereof and of the Laguna Dam as may be determined by the Secretary to be equitable and just, but not less than an amount in proportion to the total amount as are the relative capacities provided in each component part for such agency and for all other agencies, including the District. Each agency shall advance to the District, on or before January first of each year, its proportionate share of the estimated cost for that year of operation and maintenance in accordance with a notice to be issued by the District, provided that payment shall in no event be due until thirty days after receipt of notice. Prior to March 1st of each year the District shall provide each agency with a statement showing in detail the costs for the previous year for operation and maintenance of the works on account of which such agency has made advances. Differences between actual costs and estimated costs shall be adjusted in next succeeding notices. Upon request of any agency both the advance notice of estimated costs and the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided, and the cost of such review shall be borne equally by the requesting agency and the District. The District may, at its option, withhold the delivery of water from any agency until its proportionate share of the costs of operation and maintenance have been advanced or paid, as in this article provided.

Power Possibilities

Article 14. As one of the considerations for the partial termination of the contract of October 23, 1918, as provided for in Article sixteen (16) hereof, the power possibilities on the All-American Canal down to and including Syphon Drop with water carried for the benefit of the Yuma Project as provided for in Article fifteen (15) hereof, are hereby reserved to the United States. Subject to the foregoing provisions of this Article and the participation by other agencies as provided for in Article twenty-one (21) hereof, the District shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal. The net proceeds as hereinafter defined in Article thirty-two (32) hereof and as determined by the Secretary for each calendar year from any such power development shall be paid into the Colorado River Dam Fund on March first of the next succeeding calendar year and be credited to the District on this contract until the District shall have paid thereby and/or otherwise an amount of money equivalent to that herein agreed to be paid to the United States. Thereafter such net power proceeds shall belong to the District. It is agreed that in the event the net power proceeds in any calendar year, creditable to the District, shall exceed the annual installment of charges payable under this contract during the then current calendar year, the excess of such net power proceeds shall be credited on the next succeeding unpaid installment to become due from the District under this contract.

Diversion and Delivery of Water for Yuma Project

Article 15. As a further consideration for the partial termination of the contract of October 23, 1918, as pro-

vided in Article sixteen (16) hereof, the District hereby agrees to divert at the Imperial Dam, and to transport and deliver at Syphon Drop and/or such intermediate points as may be designated by the Secretary, the available water to which the Yuma Project (situated entirely within the United States and not exceeding in area 120,000 acres plus lands lying between the project levees and the Colorado River as such levees are located in 1931) is entitled, not exceeding two thousand (2,000) second-feet of water in the aggregate, or such part thereof as the Secretary may direct, for the use and benefit of said project, including the development of power at Syphon Drop, such water to be diverted, transported and delivered continuously in so far as reasonable diligence will permit provided, however, that water shall not be diverted, transported or delivered for the Yuma Project when the Secretary notifies the District that said project for any reason may not be entitled thereto; provided, further, that the District shall divert, transport and deliver such water in excess of requirements for irrigation or potable purposes, as determined by the Secretary, on the Yuma Project as so limited, only when such water is not required by the District for irrigation or potable purposes. The diversion, transportation and delivery of water for the Yuma Project as aforesaid shall be without expense to the United States or its successors in control of said project, as to capital investment required to provide facilities for such diversion and transportation of water, except such checks, turnouts and other structures required for delivery from said canal.

Contract of October 23, 1918

Article 16. That certain contract between the United States of America and the District, bearing date of

October 23, 1918, providing for a connection with Laguna Dam, is hereby terminated, except as to the provisions of Article nine (9) thereof, and as one of the considerations for the partial termination of said contract by the United States, the District hereby promises and agrees to make full payment to the United States of all unpaid installments of charges as provided in Article nine (9) of said agreement, anything in said contract to the contrary notwithstanding. As an additional consideration for the partial termination of said contract of October 23, 1918, the District hereby promises and agrees to furnish to the United States or its successors in interest in the control, operation and maintenance of the Yuma Project, from any power development on the All-American Canal at or near Pilot Knob, up to but not to exceed four thousand horsepower of electrical energy for use by the agency in charge of project operations for irrigation and drainage pumping purposes and necessary incidental use on said Yuma Project, such power to be furnished at cost (including overhead and general expense) plus ten per cent; provided, however, that the District shall not be required to furnish such power at or near Pilot Knob except at such times as all power feasible of development at Syphon Drop or developed elsewhere within a radius of 40 miles from the city of Yuma for the benefit of the Yuma Project is being used for project operations as in this article specified.

Delivery of Water by United States

Article 17. The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the District each year at a point in the Colorado River immediately above Imperial Dam, so much water as may be necessary to supply the District a total quantity, in-

cluding all other waters diverted for use within the District from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, as follows: (Subject to availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act):

The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands.

Section 2. A second priority to Yuma Project of the United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial

consumptive use, 3,850,000 acre-feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

Section 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum.

Section 5. A fifth priority (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per

annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation.

Section 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of reduced diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

Section 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accu-

mulated to the individual credit of said City and/or said County (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulations, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said City and/or said County and such users resulting therefrom.

Section 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said District and said City, and either or both may use said apportionments as may be agreed by and between said District and said City.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

Section 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the District agrees that he may, contract with any of the allottees above named in accordance with the above stated recommendation, or, in the event that such recommendation as to Palo Verde Irrigation District is superseded by an agreement between all the above allottees or by a final judicial determination, to contract with the Palo Verde Irrigation District in accordance with such agreement of determination; *Provided*, that priorities numbered fourth and fifth shall not thereby be disturbed.

As far as reasonable diligence will permit said water shall be delivered as ordered by the District, and as reasonably required for potable and irrigation purposes within the boundaries of the District in the Imperial and Coachella Valleys in California. This contract is for permanent water services but is subject to the condition that Hoover Dam and Boulder Canyon Reservoir shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the District and the United States shall observe and be subject to, and controlled by said Colorado River Compact in the construction, management and operation of Hoover Dam, Imperial Dam, All-American Canal, and other works and the storage, diversion, delivery and use of water for the generation of power, irrigation, and other purposes. The United States reserves the right to temporarily discontinue or reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacements or installation of equipment and/or machinery at Hoover

Dam, but as far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspension or reductions in delivery of water occur. This contract is without prejudice to any other or additional rights which the District may now have not inconsistent with the foregoing provisions of this article, or may hereafter acquire in or to the waters of the Colorado River. Nothing in this contract shall be construed to prevent the District from diverting water to the full capacity of the All-American Canal if and when water over and above the quantity apportioned to it hereunder is available, and no power development at Imperial and/or Laguna Dam shall be permitted to interfere with such diversion by the District, but, except as provided in Article twenty-one (21), water shall not be diverted, transported or carried by or through the works to be constructed hereunder for any agency other than the District, except by written consent of the Secretary.

Measurement of Water

Article 18. The water which the District receives under the apportionment as provided in Article seventeen (17) hereof shall be measured at such point or points on the canal as may be designated by the Secretary. Measuring and controlling devices shall be furnished and installed by the United States as a part of the work provided for herein, but shall be operated and maintained by and at the expense of the District. They shall be and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights-of-way of the District.

Record of Water Diverted

Article 19. The District shall make full and complete written reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River, and the disposition thereof. The records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

Refusal of Water in Case of Default

Article 20. The United States reserves the right to refuse to deliver water to the District in the event of default for a period of more than twelve (12) months in any payment due the United States under this contract, or, in the discretion of the Secretary to reduce deliveries in such proportion as the amount in default by the District bears to the total amount due. It is understood, however, that the provisions of this article shall not relieve the District of its obligation to divert, transport and deliver water for the use and benefit of the Yuma Project as herein elsewhere provided, nor shall it relieve the District of its obligation hereunder to divert, transport and deliver water for the use and benefit of other agencies with whom the United States may contract for the diversion, transportation and delivery of water through or by the works to be constructed under the terms hereof. The United States further reserves the right to forthwith assume control of all or any part of the works to be constructed hereunder and to care for, operate and maintain the same, so long as the Secretary deems necessary or advisable, if, in his opinion, which shall be final and binding upon the parties hereto, the District does not carry out the terms and conditions of this contract to their full

extent and meaning. In such event the District's pro rata share of the actual cost of such care, operation and maintenance by the United States shall be repaid to the United States, plus fifteen per centum (15%) to cover overhead and general expense, on March first of each year immediately succeeding the calendar year during which the works to be constructed hereunder are operated and maintained by the United States. Nothing herein contained shall relieve the District of the obligation to pay in any event all installments and penalties provided in this contract.

Use of Works by the United States and Others

Article 21. The United States also reserves the right to, and the District agrees that it may, at any time prior to the transfer of constructed works to the District for operation and maintenance, increase the capacity of the said works and contract for such increased capacity with other agencies for the delivery of water for use in the United States; provided, however, that such other agencies shall not thereby be entitled to participate in power development on said All-American Canal, except at points where and to the extent that the water diverted and/or carried for them contributes to the development of power. In the event other agencies thus contract with the United States, each of such agencies shall assume such proportion of the total cost of said works to be used jointly by such agency and the District, including Laguna Dam, as the Secretary may determine to be equitable and just but not less than the proportion that the capacity provided for such agency in such works bears to the total capacity thereof (except in that part thereof above Syphon Drop including Laguna Dam, in which part the proportion which such other agency shall assume shall be not less than the

proportion that the capacity provided for such agency therein bears to the total capacity thereof less the capacity to be provided hereunder without cost to and for the Yuma Project) and the District's financial obligations under this contract shall be adjusted accordingly. In no event shall construction costs chargeable to the District be increased by reason of additional capacity being provided for any such agency or agencies or contract or contracts having been made with same. Any such agency thus contracting shall also be required to reimburse the District in such amounts and at such times as the Secretary may determine to be equitable and just for payments theretofore made by the District for the right to use Laguna Dam.

Title to Remain in the United States

Article 22. Title to the aforesaid Imperial Dam and All-American Canal to be constructed by the United States under the terms and conditions hereof, shall be and remain in the United States notwithstanding transfer of the care, operation and maintenance thereof to the District; provided, however, that the Secretary may, in his discretion, when repayments to the United States of all moneys advanced shall have been made, transfer the title to said main canal and appurtenant structures, except the diversion dam and the main canal and appurtenant structures down to and including Syphon Drop, to the District or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form or organization as may be acceptable to him.

Assessment of Public Land

Article 23. The following lands are hereby designated as subject to the provisions of the act of August 11, 1916

(39 Stat., 506), and the act of May 15, 1922 (42 Stat., 541):

(a) All unentered public lands and entered lands for which no final certificate has been issued, situate within the District at the date hereof; and when included within the District, unentered public lands and entered lands for which no final certificate has been issued, hereafter to be included within the District pursuant to this contract, all described in a statement marked "Exhibit 'B'" attached hereto and by reference thereto made a part hereof; and

(b) unentered public lands and entered lands for which no final certificate has been issued not so described but hereafter annexed to the District, upon the Secretary's consenting, in the case of such lands hereafter annexed to the District, to assessment hereunder of such added lands, which consent will be requested by resolution of the Board of Directors of the District and will be manifested by letter filed with the District, a copy of such letter to be filed also with the General Land Office, and a copy with the proper local Land Office.

Within a reasonable time, to be determined by the Secretary, from the date water is available for and can be delivered to any public lands within the boundaries of the District, such lands shall be opened to entry.

Rules and Regulations

Article 24. There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract, governing the diversion and delivery of water hereunder to the District and to other contractors. Such rules and regulations may be modified, revised and/or extended from time to time after

notice to the District and opportunity for it to be heard, as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof, or to protect the interests of the United States. The District hereby agrees that in the operation and maintenance of the Imperial Dam and All-American Canal, all such rules and regulations will be fully adhered to.

Inspection by the United States

Article 25. The Secretary may cause to be made from time to time a reasonable inspection of the works constructed by the United States under the terms hereof to the end that he may ascertain whether the terms of this contract are being satisfactorily executed by the District. The actual expense of such inspection in any calendar year, as found by the Secretary, shall be paid by the District to the United States on March first of each year immediately following the year in which such inspection is made, and upon statement to be furnished by the Secretary. The Secretary or his representative shall at all times have the right of ingress to and egress from all works of the District for the purpose of inspection, repairs and maintenance of works of the United States, and for all other purposes.

Access to Books and Records

Article 26. The officials or designated representatives of the District shall have full and free access to the books and records of the United States, so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same; and the Secretary shall have the same right in respect of the books and records of the District.

Disputes or Disagreements

Article 27. Disputes or disagreements as to the interpretation or performance of the provisions of this contract, except as otherwise provided herein, shall be determined either by arbitration or court proceedings, the Secretary being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within thirty (30) days after their first meeting, such arbitrators not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Interest and Penalties

Article 28. No interest shall be charged on any installments of charges due from the District hereunder except that on all such installments or any part thereof, which may remain unpaid by the District to the United States after the same become due, there shall be added to the amount unpaid a penalty of one-half of one per centum (½%) and a like penalty of one-half of one per centum (½%) of the amount unpaid shall be added on the first day of each month thereafter so long as such default shall continue.

Agreement Subject to Colorado River Compact

Article 29. This contract is made upon the express condition and with the express understanding that all

rights based upon this contract shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved by the Boulder Canyon Project Act.

Application of Reclamation Law.

Article 30. Except as provided by the Boulder Canyon Project Act, the reclamation law shall govern the construction, operation and maintenance of the works to be constructed hereunder.

Contract to Be Authorized by Election and Confirmed by Court

Article 31. The execution of this contract by the District shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to judgment proceedings in court for a judicial confirmation of the authorization and validity of this contract. The United States shall not be in any manner bound under the terms and conditions of this contract unless and until a confirmatory final judgment in such proceedings shall have been rendered, including final decision, or pending appellate action if ground for appeal be laid. The District shall without delay and at its own cost and expense furnish the United States for its files, copies of all proceedings relating to the election upon this contract and the confirmation

proceedings in connection therewith, which said copies shall be properly certified by the Clerk of the Court in which confirmatory judgment is obtained.

Method of Determining Net Power Proceeds

Article 32. In determining the net proceeds for each calendar year from any power development on the All-American Canal, to be paid into the Colorado River Dam Fund as provided in Article fourteen (14) hereof, there shall be taken into consideration all items of cost of production of power, including but not necessarily limited to amortization of and interest on capital investment in power development, replacements, improvements, and operation and maintenance, if any. Any other proper factor of cost not here expressly enumerated may be taken into account in determining the net proceeds.

Contingent Upon Appropriations

Article 33. This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam Fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam Fund to permit of said allotments. If more than three years elapse after this contract becomes effective and before appropriations are available to permit the United States to make expenditures hereunder, the District may, at its option, upon giving sixty (60) days written notice to the Secretary, cancel this contract. Such

option shall be expressed by vote of the electors of the District with the same formalities as required for the authorization of contracts with the United States.

Inclusion of Lands

Article 34. (a) In this article where the words "area to be included" are used such words shall be understood to mean those certain areas shown on Exhibit "A" and bounded by the lines indicated thereon as "Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District."

(b) The District agrees to change its boundaries within a reasonable time after the execution of this contract, in the manner provided by law, so as to include within the District the public lands of the United States in Imperial County lying south of the northerly boundary line of Township eleven (11) South of the San Bernardino Base Line, and within the area to be included.

(c) The District further agrees to change its boundaries, if lawful petition or petitions therefor be presented to its Board of Directors prior to the first day of January, 1940, so as to include within the District any privately owned and/or entered lands for which final certificate has not been issued, in Imperal County, lying south of the northerly boundary line of Township eleven (11) South of the San Bernardino Base Line, and within the area to be included.

(d) The District further agrees to change its boundaries, in the manner provided by law, so as to include within

the District the lands lying north of the northerly boundary line of Township eleven (11) South of the San Bernardino Base Line, and within the area to be included, if lawful petition or petitions sufficient in all respects for such inclusion be presented to its Board of Directors at any time prior to the expiration of thirty days from and after the date on which a confirmatory judgment, as required by Article 31 hereof, declaring this contract in all respects valid and duly authorized, shall have become final; provided, however, that the District shall not change its boundaries so as to include any of said lands lying north of the northerly boundary line of said Township eleven (11) South, unless the said petition or petitions so filed shall be sufficient to lawfully include in the aggregate not less than ninety (90%) per centum (the areas to be approved by the Secretary) of the said lands, exclusive of the Dos Palmas area and exclusive of Indian lands and public lands of the United States. Within a reasonable time after the inclusion of such lands pursuant to said petition or petitions the District further agrees to change its boundaries, in the manner provided by law, so as to also include within the District the public lands of the United States within the area to be included and lying north of the northerly boundary line of said Township eleven (11) South.

(e) Whenever any of the lands within the area to be included are included within the District the inclusion thereof shall be made upon conditions substantially as hereinafter contained (filling blank spaces with appro-

priate unit names as may be required and other proper designations), and the Secretary, on behalf of the United States, hereby consents to such inclusion and conditions, which conditions are as follows:

CONDITION No. 1

Definitions

In the following conditions, the word "District" shall mean Imperial Irrigation District; the word "Board" shall mean the Board of Directors of Imperial Irrigation District; the words "All-American Canal Contract" shall mean that certain contract between the United States of America by Ray Lyman Wilbur, Secretary of the Interior, and Imperial Irrigation District, dated....., and
(date of this contract)
entitled "Contract for construction of diversion dam, main canal and appurtenant structures and for Delivery of Water," authorized by the electors of Imperial Irrigation District at an election held.....
.....; and the words "distribu-
(date of this contract authorized)
tion system" shall mean the secondary main canal and lateral system or systems, including all canals, pipe lines, structures, pumping plants, machinery and incidental works necessary or convenient under the rules and regulations of Imperial Irrigation District for delivery of water for irrigation and domestic purposes from the All-American Canal, as the same is shown on Exhibit "A" attached to and made a part of said All-American Canal Contract, to lands in .....Unit as such unit is
(name)
hereinafter defined.

CONDITION No. 2

Division Into Units

For the purposes of these conditions and in compliance with the terms of the All-American Canal Contract, the District shall be divided into units, commencing with Imperial Unit, which unit shall comprise the lands within the District as of July 1, 1931, and such other lands as may at any time or from time to time be added thereto in the discretion of the Board..... Unit shall
(name)
comprise .....
.....
.....
(here shall follow description or other designation of the unit involved as provided by Article 10 (c) of the All-American Canal Contract).

CONDITION No. 3

All-American Canal Contract

The lands within.....
(name)
Unit shall be, in all respects, bound by all of the terms and conditions of the All-American Canal Contract and particularly by Article 10 thereof, and shall pay, as a unit obligation, the several amounts and in the manner and at the times provided for in said contract, as the Board my determine; provided, that said lands in .....
(name)
.....Unit shall pay to the District, as a unit obligation, that porportion of the total sum paid by the District to the United States under that certain contract of October 23, 1918, between

the United States and the District for the right to connect with Laguna Dam, prior to the payment of the first installment on said contract of October 23, 1918, for which said land shall be assessed, that the total area of.....Unit
(name)
bears to the total area of the District at the date notice of completion of all work provided for in the All-American Canal Contract shall be given, pursuant to Article 12 thereof, to the District. Said sum shall be divided into ten annual installments, as nearly equal as may be practicable, and paid, commencing with the calendar year next succeeding the calendar year when such notice of completion shall be so given.

CONDITION No. 4

Distribution System

The lands within.....Unit
(name)
shall pay, as a unit obligation, the total capital cost of any distribution system which may be constructed by or under authority of the District, to serve the lands within said.....Unit or any
(name)
part thereof. When said distribution system, or any part thereof, is constructed, or an obligation therefor is incurred, said lands shall pay annually, such sum or sums as may be necessary to meet the then current obligation therefor, whether for principal or interest or both, or otherwise. Said distribution system shall at all times be and remain the exclusive property of the District unless the District shall provide otherwise, in the discretion of the Board. When funds for the construction of said distribution system

are made available, the District shall construct or authorize the same to be constructed, as the Board may determine.

CONDITION No. 5

Pumping Costs

The Board shall provide by rule for the payment by the lands served of the cost of power required to pump water to or for the use of such lands.

CONDITION No. 6

Charges to be Part of Assessment

Any and all charges against or upon the lands within.....Unit provided
(name)
for by the foregoing conditions unless otherwise collected from the lands within.....
(name)
Unit shall be a part of, but in addition to, the annual assessment upon the said lands for other District purposes and payable in installments accordingly, and shall constitute an additional annual charge upon the land, and the Board shall levy such assessment upon the said lands upon an ad valorem or other basis as now or hereafter provided by law, in an amount or in amounts sufficient to raise the several sums provided for from the said lands within .....Unit; provided, that
(name)
for the protection of the interests and security of the United States, pending completion of construction of the All-American Canal to such extent that water is available in said canal for use in.....

.....Unit, the annual assessment
(name)
upon the lands within said unit for District purposes shall be limited to raise only the just proportion chargeable to said unit for expenditures connected with or applying to the All-American Canal and/or arising from expenditures made in or on behalf of said unit.

(f) In the event petition or petitions for inclusion, pursuant to this article, of any privately-owned lands or entered lands for which no final certificate has at the time been issued, lying south of the northerly boundary line of Township eleven (11) South of the San Bernardino Base Line, and within the area to be included, be presented subsequent to the expiration of thirty days from and after the date on which a confirmatory judgment, as required by Article 31 hereof, declaring this contract in all respects valid and duly authorized, shall have become final, then the District may in the discretion of the Board of Directors require as a condition precedent to the granting of said petition or petitions and in addition to the other conditions above named, that the petitioners shall pay to the District such respective sums as nearly as the same can be estimated (the amounts to be determined by the Board) as the holders of title or evidence of title to the several parcels of land involved in said petition or petitions and their grantors would have been required to pay to the District as assessments had such lands been included within the District at the expiration of said 30-day period, or such portion of said sum as the Board of Directors may at the time determine. The provisions of this sub-article shall also apply to all lands lying north of the northerly boundary line of said Town-

ship eleven (11) South, and within the area to be included, provided the ninety per centum (90%) petition required by sub-article (d) of this article is filed prior to the expiration of said 30-day period.

(g) In the event the petition or petitions for inclusion of the said lands lying north of the northerly boundary line of said Township eleven (11) South of the San Bernardino Base Line, as in sub-article (d) above provided are not made and filed with the Board of Directors of the District prior to the expiration of thirty days from and after the date on which a confirmatory judgment, as required by Article 31 hereof, declaring this contract in all respects valid and duly authorized, shall have become final, as hereinabove provided, then said lands shall not thereafter be included within the District under the provisions of this contract and the works referred to in this contract north of the northerly boundary line of said Township eleven (11) South of the San Bernardino Base Line shall not be constructed under this contract and the District shall be relieved from all responsibility therefor, anything in this contract to the contrary notwithstanding, and the capacities in the works to be constructed under this contract, shall be reduced accordingly.

(h) Nothing contained in this contract shall impair any right or remedy of any person entitled to object or protest against the inclusion within the District of any particular tract or tracts of land, or the conditions imposed by the Board of Directors of the District on the inclusion of any particular tract or tracts, nor impair the power of the Board to hear and determine any such objections or protests, but if in the opinion of the Secretary such determination by the Board substantially impairs the interests of, or security otherwise available to,

the United States, under this contract, then and in such event the United States shall be under no obligation to proceed further under this contract. In the event any petition or petitions be filed for the inclusion within the District of any lands within the area to be included and, after the conditions set out in sub-article (e) of this article, or conditions less burdensome, are imposed thereon, a sufficient majority statement or statements in writing be filed objecting to the inclusion of such lands with the conditions imposed thereon, so that the Board of Directors is required to dismiss such petition or petitions, then it shall be regarded as if such petition or petitions had not been filed.

Priority of Claims of the United States

Article 35. Claims of the United States arising out of this contract shall have priority over all others, secured and unsecured.

Rights Reserved under Section 3737 Revised Statutes

Article 36. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies under Contract not Exclusive

Article 37. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States or the District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a

waiver of any other provision hereof or of a subsequent breach of such provision.

Interest in Contract not Transferable

Article 38. No interest in this contract is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Member of Congress Clause

Article 39. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

Attest:
NORTHCUTT ELY
ELWOOD MEAD

Attest:
F. D. McIVER
Secretary.

THE UNITED STATES OF AMERICA
By ROY LYMAN WILBUR
Secretary of the Interior.

IMPERIAL IRRIGATION DISTRICT
By JOHN L. DUBOIS
President.

[Seal]

NOTE

Attached to original as Exhibit "B" is a 15 page detailed description by reference to U. S. Government surveys of unentered public lands and entered public lands for which no final certificate had been issue, all referred to as lands to be included, as set forth in Article 34 and elsewhere of the foregoing contract. (Omitted due to lack of space.)

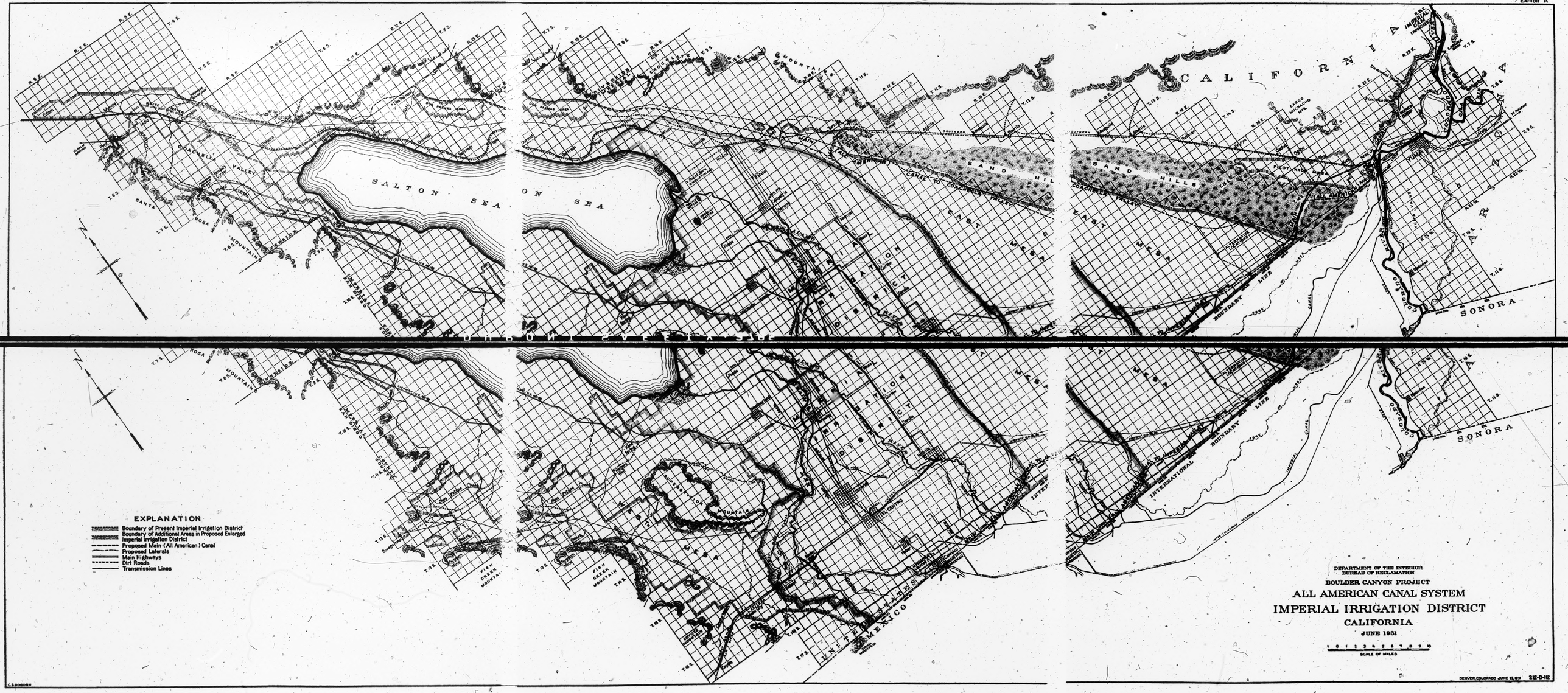


Exhibit A
CALIFORNIA
ARIZONA
SONORA
SALTON SEA
SAND HILLS
EAST MESA
WEST MESA
COACHELLA VALLEY
SANTA ROSA MOUNTAINS
FISH CREEK MOUNTAIN
INTERNATIONAL BOUNDARY LINE
UNITED STATES
MEXICO
EXPLANATION
Boundary of Present Imperial Irrigation District
Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District
Proposed Main (All American) Canal
Proposed Laterals
Main Highways
Dirt Roads
Transmission Lines
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOULDER CANYON PROJECT
ALL AMERICAN CANAL SYSTEM
IMPERIAL IRRIGATION DISTRICT
CALIFORNIA
JUNE 1931
SCALE OF MILES
DENVER, COLORADO JUNE 23, 1931
212-D-112

APPENDIX NO. 14

AGREEMENT OF COMPROMISE: IMPERIAL IRRIGATION DISTRICT AND COACHELLA VALLEY WATER DISTRICT

February 14, 1934

Sec. 1. This Agreement, Made the 14th day of February, 1934, by and between Imperial Irrigation District, an irrigation district organized and existing under and by virtue of the California Irrigation District Act of the State of California and acts amendatory thereof or supplementary thereto, with its principal office at El Centro, Imperial County, California, said District being hereinafter sometimes styled "Imperial District," and Coachella Valley County Water District, a County Water District organized and existing under and by virtue of the County Water District Act of the State of California and acts amendatory thereof or supplementary thereto, and having its office at Coachella, Riverside County, California, said District being hereinafter sometimes styled "Coachella District,"

Witnesseth:

RECITALS.

Sec. 2. That, Whereas, Pursuant to the terms of the Boulder Canyon Project Act, approved December 21, 1928 (45 Stat. 1057), the Secretary of the Interior is authorized to construct a main canal and appurtenant structures located entirely within the United States, connecting Laguna Dam or other suitable diversion dam, which said Secretary is authorized to contruct, with Imperial and Coachella Valleys in California; and

Sec. 3. Whereas, The Secretary of the Interior has determined upon engineering and economic considerations

to construct a new diversion dam on the Colorado River approximately four and one-half miles above Laguna Dam, which new diversion dam has heretofore been and is designated Imperial Dam; and

Sec. 4. Whereas, Pursuant to the Boulder Canyon Project Act, a contract, dated December 1, 1932, hereinafter styled "Imperial Contract," has heretofore been executed between the United States and Imperial District for the construction of said Imperial Dam, main canal and appurtenant structures, which said main canal and appurtenant structures are hereinafter styled "All-American Canal," and for the re-payment of the cost thereof as provided by law; and

Sec. 5. Whereas, By said Imperial Contract, certain lands in Coachella Valley, and within Coachella District and lands adjacent to said District may, by petition, be included within the boundaries of Imperial District, and if said lands are not so included, then the works and capacity to serve said lands shall not be constructed under said contract; and

Sec. 6. Whereas, Said Coachella District through its Board of Directors has determined that said lands will not become a part of Imperial District pursuant to said contract, and that Coachella District desires to obtain a contract, hereinafter styled "Coachella Contract," with the United States, separately from Imperial District, for capacity in said Imperial Dam and All-American Canal to be provided for the benefit of said Coachella District, in addition to the capacity therein provided for Imperial District, and to pay the proper cost of such capacity; and

Sec. 7. Whereas, Under date of August 18, 1931, an agreement was made between certain interested agencies

in California, including the parties to this agreement, for the apportionment of the Colorado River water available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act, a portion of which agreement is set out in Article 17 of said Imperial Contract as being a recommendation of the Chief of the Division of Water Resources of the State of California; and

Sec. 8. Whereas, Water for irrigation and domestic uses in the areas to be served under or from the All-American Canal in Imperial and Coachella Valleys will be supplied pursuant to the third and sixth priorities of said recommendation of the Chief of the Division of Water Resources of the State of California; and

Sec. 9. Whereas, Imperial District has certain prior rights to the use of the waters of the Colorado River, and the extent of said rights is in dispute as between the parties hereto, and each of said parties makes certain claims as to the use of said waters; and

Sec. 10. Whereas, The parties hereto, upon their respective contracts with the United States becoming effective and said All-American Canal being constructed, will respectively have certain power possibilities on the All-American Canal, which it is desired to have developed, operated and controlled as a unified project; and

Sec. 11. Whereas, Controversy has arisen and now exists between the parties hereto as to the extent and relation of their respective present and future rights to water and power on and from said All-American Canal, which controversy it is desired to have compromised and settled by this agreement;

Now, Therefore, In consideration of the premises and the mutual obligations and covenants of the parties hereto and as a compromise and settlement of their said respective rights, privileges and claims respecting the matters herein contained, it is agreed:

COACHELLA CONTRACT.

Sec. 12. Coachella District will forthwith apply to the proper governmental authorities for a contract between itself and the United States for the construction by the United States of the portion of the Imperial Dam and All-American Canal which will serve said District, and for the payment of its proper proportion of construction and other costs and for delivery of water; said contract to be in harmony with the provisions of the Imperial Contract and this agreement. The draft of said proposed Coachella Contract attached hereto and marked "Annex A" has been examined by Imperial District and the substance of said draft is approved by the parties hereto. Imperial District agrees that said draft, or such other draft as may be acceptable to the United States and in harmony with the provisions of the Imperial Contract and of this agreement, may be executed between the Coachella District and the United States. Imperial District will actively assist Coachella District in obtaining execution of such contract by the United States.

VALIDATION ACTION.

Sec. 13. That forthwith upon the execution of this agreement Coachella District will cause to be dismissed on behalf of itself and A. B. Cliff, John H. Colbert, R. C. Egnew, J. C. Jones and Washington McIntyre, with the stipulation that remittitur issue forthwith and that each

party pay his or its own costs, their appeal now pending in the Supreme Court of California, in that certain action entitled: "In the Matter of the Validation of a Contract Dated Dec. 1, 1932, Entitled 'Contract for Construction of Diversion Dam, Main Canal and Appurtenant Structures, and for Delivery of Water,' between the United States of America and Imperial Irrigation District. John L. Dubois, et al., Plaintiffs and Respondents, vs. All Persons, Defendants; Coachella Valley County Water District et al., Defendants and Appellants," being L. A. No. 14487, and this agreement shall not become effective for any purpose unless and until said appeal is so dismissed on behalf of all of said parties within ten (10) days from the execution hereof. Coachella District will actively assist in bringing said action to an early and final conclusion to the end that the present judgment be sustained.

GENERAL PROVISIONS.

Sec. 14. The provisions of this agreement hereinafter set forth shall be effective and binding upon the parties hereto only in the event that the Coachella Contract above mentioned is executed by and between the United States and said Coachella District prior to the transfer of constructed works to Imperial District for operation and maintenance, as provided by said Imperial Contract, and such Coachella Contract prior to such transfer or thereafter become binding upon the parties thereto, pursuant to law. After this agreement becomes effective, it together with the lease herein provided for, shall terminate in the event Coachella District shall be relieved of all obligations under the Coachella Contract, by reason of failure of the United States to complete the works to be constructed thereunder.

WATER.

SEC. 15. As a full and complete compromise and settlement of the controversy existing between the parties hereto as to the extent and priority of their respective rights and claims to the use of the waters of the Colorado River, it is agreed, as between said parties, that:

Imperial Irrigation District shall have the prior right for irrigation and potable purposes only, and exclusively for use in the Imperial Service Area, as hereinafter defined, or hereunder modified, to all waters apportioned to said Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys as provided in the third and sixth priorities set out in the recommendation of the Chief of the Division of Water Resources of the State of California, as contained in Article 17 of the Imperial Contract. Subject to said prior right of Imperial Irrigation District, Coachella Valley County Water District shall have the next right, for irrigation and potable purposes only and exclusively for use in the Coachella Service Area, as hereinafter defined, or hereunder modified, to all waters so apportioned to said Imperial Irrigation District and other lands under or that will be served from the All-American Canal in the Imperial and Coachella Valleys, as provided in said third and sixth priorities. The use of water for generation of electric energy shall be, in all respects, secondary and subservient to all requirements of said two districts for irrigation and potable purposes as above limited.

As hereinabove used, the term "Imperial Service Area" shall comprise all lands within the boundaries of Imperial

Irrigation District as said District was constituted on June 23, 1931 and all lands in Imperial and San Diego Counties, California, shown on map marked Exhibit "A", attached to said Imperial contract, and included within hatched border lines indicated on said map by legend as "Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District," other than (a) such of said lands as are labeled "Dos Palmas Area" and (b) such of said lands as lie West of Salton Sea and North of the Northerly boundary line of Township 11, South of the San Bernardino Base Line. The term "Coachella Service Area" shall comprise all lands described on statements hereto attached and marked "Exhibits" "B," "C," "D" and "E," respectively, being approximately, but not exactly, the lands within said hatched border lines shown on said Exhibit "A," other than those included in said Imperial Service Area. Upon application of either district and with the written consent of the Secretary of the Interior, the boundaries of the service area which such district is entitled hereunder to serve may at any time or from time to time be changed, but may not be so changed as, in the aggregate, to add more than 5000 acres to, nor to subtract more than 5000 acres from such service area, as herein defined, without the written consent of the district entitled hereunder to serve the other service area. Coachella District shall not participate in any revenues received by Imperial District for diverting, carrying and delivering at or near Pilot Knob, water for irrigation or domestic use for any person or agency other than the parties hereto, and Coachella District shall perform no such service at or near Pilot Knob.

APPLICATIONS TO APPROPRIATE WATER.

Sec. 16. The parties hereto agree that their respective applications to appropriate water from the Colorado River for irrigation and domestic purposes heretofore filed with the Division of Water Resources of the State of California be deemed amended to conform with the foregoing provisions of this agreement and stipulate that permits be issued to them, respectively, in accordance herewith and agree to file with said Division all necessary papers and stipulations to that end. Except as between the parties hereto the provisions of this agreement shall not affect nor impair any rights of either party to the waters of the Colorado River.

LEASE OF POWER RIGHTS.

Sec. 17. As a compromise and settlement of the controversy existing between the parties hereto as to all power possibilities, power rights, power resources and power privileges upon the whole of said All-American Canal in both Imperial and Riverside Counties, now or hereafter held, owned, or possessed by said parties, or either of them, including all those at or near Pilot Knob, which said power possibilities, power rights, power resources and power privileges are hereinafter styled "power rights," and to combine and co-ordinate all of said power rights as a unified project so as to produce the maximum benefits to the parties hereto and to the United States, it is agreed that the parties hereto will, within a reasonable time after the execution of said Coachella Contract, execute a good and sufficient lease agreement, wherein Coachella District shall demise to Imperial District all of said power rights which the Coachella District may now

have or hereafter obtain. Said lease, among other reasonable provisions, shall provide:

(a) That the term of said lease shall commence with the date thereof and terminate on January 1, 2033; provided, that should the term herein or in said lease fixed exceed that permitted by law at the date of said lease, then said term shall be deemed reduced to the longest period permitted by law;

(b) That said lease shall vest in Imperial District the entire and exclusive operation, management, development and control of all said power rights and the use, sale and control of power produced therefrom;

(c) That subject to the conditions hereinafter contained, Imperial District shall pay, on March first of each year, as rental for said demised power rights, eight per cent of the net proceeds, as defined in sub-section (f) hereof, received by Imperial District during the preceding calendar year from all said power rights held, owned or possessed by both parties hereto and from all power works and power facilities by or in connection with which Imperial District utilizes said power rights;

(d) That said rentals shall be paid by Imperial District to the United States and credited on the Coachella Contract until Coachella District's obligations to the United States under said contract are fully paid, and thereafter Imperial District shall pay said rentals to Coachella District;

(e) That no rentals shall be due or payable unless and until capacity in the All-American Canal shall have been provided for Coachella District down to Pilot Knob;

(f) That in determining said net proceeds, as between the parties hereto, there shall be taken into consideration

all items of cost of production and disposal of power, including, but not necessarily limited to amortization of and interest on capital investment for power purposes, improvements, operation and maintenance, and depreciation, and any other proper factor of cost not herein expressly enumerated;

(g) That the determination of said net proceeds for the purpose of ascertaining rentals payable under said lease shall be made without reference to the fact that as to Imperial District said rentals will constitute a part of the cost of doing business;

(h) That on March first of each year Imperial District shall furnish to Coachella District a statement of account showing the computation of said rental;

(i) That Coachella District shall not be required to contribute in any manner to the cost of construction, operation or maintenance of any power works or facilities on or in connection with the All-American Canal, except indirectly, as said items may be taken into consideration in determining rentals to be paid under said lease;

(j) That said lease shall terminate upon Coachella District being relieved of obligations as provided in Section 14 hereof and/or at the option of Coachella District, in the event of default in any payment of rentals by Imperial District for a period of two years;

(k) That any overdue rental shall bear interest at the rate of one-half of one per cent per month until paid;

(l) That when Imperial District is ready to undertake construction of facilities to serve electrical energy (herein designated "power") in Coachella Valley, Coa-

chella District shall obtain for Imperial District signed contracts or applications for power as provided in Section 18 hereof, and be otherwise subject to the provisions of said Section 18;

(m) That when Imperial District is ready to serve power from the All-American Canal in Coachella Valley, then, if and while said lease is in effect, Imperial District will furnish such power in Coachella District at the rates and upon the conditions provided in Section 19 hereof;

(n) That Coachella District shall, by its officials or designated representatives, have the right of ingress to and egress from all power works and facilities of Imperial District for the purpose of inspection thereof, and full and free access to and the right during office hours to inspect and copy all books and records of Imperial District relating to its power operations;

(o) That the interest of Imperial District under said lease shall not, nor shall any part thereof nor interest therein, be assigned, nor shall Imperial District sublet any part of nor interest in said demised power rights without the written consent of Coachella District;

(p) That at the termination of said lease the rights and privileges of the parties thereto shall be segregated and/or adjusted as may be equitable and just, having in view the business, interests and investments of the parties and their respective legal and equitable rights in said power rights, works and facilities on or in connection with the All-American Canal;

(q) That in the event the parties cannot agree upon such segregation or adjustment, then the same shall be made by a board of arbitration, consisting of five persons, one to be selected by Imperial District, one by Coachella

District, and three by the Secretary of the Interior and the decision of said board of arbitration shall be final and binding upon the parties to said lease.

(r) That nothing contained in said lease shall be construed as in any manner abridging, limiting, or depriving either of the parties thereto of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions of said lease which it would otherwise have;

(s) That the waiver of a breach of any of the provisions of said lease shall not be deemed to be a waiver of any other provision thereof or of a subsequent breach of such provision.

POWER CONTRACTS.

Sec. 18. When the lease provided for in Section 17 hereof has been executed and Imperial District is ready to undertake construction of facilities to serve electrical energy, (herein styled "power") in Coachella Valley it shall notify Coachella District of said fact in writing and it shall thereupon be the duty of Coachella District to obtain for Imperial District, within six months after service of such notice, contracts or applications for power signed by consumers using at the time of service of such notice not less than eighty per cent of the power load then being consumed in the Coachella Service Area. Such contracts or applications shall be in such form and substance as reasonably required by Imperial District and shall among other things bind the consumer to take from Imperial District all power that he may require in Coachella District for a period of three years. In the event of disagreement between the parties as to whether or not Coachella District has complied with the foregoing

provisions of this section on its part to be complied with, then the Secretary of the Interior may, at the written request of either party, determine said fact and notify the parties hereto of such determination in writing, and such determination shall be final and binding upon the parties hereto. Notwithstanding anything herein or in said lease contained, there shall be no obligation on the part of the Imperial District for rentals under said lease during the time, if any, after said six months period that said signed contracts or applications for said eighty per cent of power load have not been so delivered.

POWER RATES.

Sec. 19. When the lease provided for in Section 17 hereof has been executed and Imperial District is ready to serve power from the All-American Canal in Coachella Valley then, and while said lease remains in effect, Imperial District will furnish such power in Coachella District upon the following terms:

A. To Coachella District, for use by itself for project purposes within said Coachella Service Area as such project purposes are hereinafter defined, at rates in no case exceeding the cost of power delivered in Coachella Valley, plus fifteen per cent, and in no event at rates higher than are charged by Imperial District to itself for like uses with such additional charges as may be necessary to offset difference in costs of transmitting power as between Imperial and Coachella Valleys. Subject to the foregoing provisions, Coachella District agrees that, for a period of five years from and after the service of the notice provided for in Section 18 hereof said Coachella District will purchase from Imperial District and pay for all power Coachella District may require for project pur-

poses within the Coachella Service Area, and for which Imperial District has sufficient facilities and is prepared to serve. Imperial District shall not be required to furnish power to Coachella District for project purposes at points where Imperial District does not then have sufficient facilities for such power service.

"Project Purposes" as used in this section shall be understood to mean construction, operation and maintenance of Coachella District's irrigation and drainage system within the Coachella Service Area, where such construction, operation, or maintenance is of a general public nature and not individual or private in character.

B. To all consumers within Coachella District, other than to Coachella District for project purposes, at no higher rates than those charged, and under the same conditions and regulations as those prescribed, by Imperial District for like service to consumers within Imperial District with such additional charges as may be necessary to offset difference in costs of transmitting power as between Imperial and Coachella Valleys. In no event shall such rates to such consumers exceed seventy-five per cent of the rates paid for like service by individual consumers in Coachella District on January 1, 1934, based upon the purchasing power of the dollar on said date. Imperial District shall make such further reduction in rates to such consumers as may be necessary to meet competitive rates for like service of any public utility, at the time authorized by the Railroad Commission of the State of California, or other authority succeeding to its functions, and able to serve such consumers, but in no event shall Imperial District be required to charge rates that will return less than the cost of service.

POWER PERMITS.

Sec. 20. The parties hereto agree to cooperate to the end that all necessary and proper permits and licenses to appropriate water for power purposes and construct power facilities may be obtained from the Division of Water Resources of the State of California and/or Federal Power Commission as may be authorized by law and hereby stipulate that such permits and licenses issue to the parties hereto, as follows, to-wit:

1. To Imperial District, as to all such permits and licenses on the portion of the All-American Canal shown on said Exhibit "A" and marked "Main (All American) Canal to Imperial Valley" lying west of the southerly end of the "Main (All American) Canal to Coachella Valley" as same is shown on said Exhibit "A";

2. To Coachella District, as to all such permits and licenses on the portion of the All-American Canal shown on said Exhibit "A" and marked "Main (All American) Canal to Coachella Valley" lying North of the Northerly boundary line of Township 11, South of the San Bernardino Base Line;

3. To Imperial District and Coachella District, as their respective privileges to utilize power possibilities may appear from their said contracts with the United States, as to all such privileges on all portions of the Imperial Dam and All-American Canal, including Pilot Knob, not herein above specified.

AGREEMENT VOID IF CERTAIN LANDS INCLUDED IN IMPERIAL DISTRICT.

Sec. 21. In the event lawful petition or petitions sufficient in all respects for inclusion within Imperial District of ninety per cent (90%) of the lands shown on said Exhibit "A" lying north of the northerly boundary line of Township Eleven (11), South of the San Bernardino Base Line and bounded by the lines indicated on said Exhibit "A" as "Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District", exclusive of the Dos Palmas Area and exclusive of Indian lands and public lands of the United States, shall be filed pursuant to and within the time limited by said Imperial Contract, and said lands shall be thereafter included within said Imperial District pursuant to such petition or petitions, then, as of the date of such inclusion, this agreement shall terminate and be at an end.

REMEDIES UNDER AGREEMENT NOT EXCLUSIVE.

Sec. 22. Nothing contained in this agreement shall be construed as in any manner abridging, limiting, or depriving either of the parties hereto of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this agreement shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Sec. 23. This agreement shall not be interpreted nor construed so as to amend, modify or change said Imperial Contract in any particular, and no provision hereof in conflict with said Imperial Contract shall be of any force or effect. As to any provisions hereof in which the United

States is interested this Agreement shall be deemed to be made expressly for the benefit of the United States, as well as of the parties hereto.

Sec. 24. This agreement shall inure to and be binding upon the parties hereto, their and each of their respective successors and assigns.

In Witness Whereof, Said parties have executed this agreement in triplicate original by their respective officers, thereunto duly authorized by resolutions of their respective Boards of Directors, the day and year first above written.

IMPERIAL IRRIGATION DISTRICT
By EVAN T. HEWES
Its President

ATTEST:
W. W. GOODSON
Its Secretary
(Seal)

COACHELLA VALLEY COUNTY WATER DISTRICT
By HARRY W. FORBES
Its President

ATTEST:
HELEN F. RUNYEN
Its Secretary
(Seal)

Note:

Attached to the original of the foregoing Agreement of Compromise dated February 14, 1934, between Imperial Irrigation District and Coachella Valley County Water District are the following as exhibits.

EXHIBIT "A"

A map bearing symbol number 212-0-112 designated "Boulder Canyon Project All American Canal System."

CALIFORNIA 1931

This map is identical with the map attached to the Contract of December 1, 1932, between United States of America and Imperial Irrigation District found in Appendix 13 to the Answer except that in the place of the words "Imperial Irrigation District" in said Appendix 13 the words "Coachella Valley County Water District" are used in the description designation on said map Exhibit A.

EXHIBIT "B"

A description by reference to U. S. Government survey of the lands within Coachella Valley County Water District and its Improvement District No. 1 and within the Coachella Service Area as referred to in the aforesaid contract.

EXHIBIT "C"

A description by U. S. Government Survey of Lands outside Coachella Valley County Water District and within the Coachella Service Area designated the Salton Area as referred to in the aforesaid contract.

ANNEX "A"

The form and language of a proposed contract to be made between United States of America and Coachella Valley County Water District, with Exhibits "A", "B", and "C" above referred to, duplicated and attached thereto—all referred to in the aforesaid compromise agreement.

(The above items are omitted to save space.)

APPENDIX NO. 15

REPAYMENT CONTRACT: UNITED STATES AND CITY OF SAN DIEGO

October 2, 1934

[Symbol I1r-1151]

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOULDER CANYON PROJECT
ALL-AMERICAN CANAL
THE CITY OF SAN DIEGO, CALIFORNIA

Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures.

Article 1. **This Contract,** made this 2d day of October, nineteen hundred thirty-four, pursuant to the Act of Congress approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat., 1057), designated the Boulder Canyon Project Act, and the Act of Congress approved June 16, 1933 (48 Stat., 195), designated the National Industrial Recovery Act, between **The United States of America,** hereinafter referred to as the United States, acting for this purpose by Harold L. Ickes, ~~Federal Emergency Administrator of Public Works and~~ Secretary of the Interior, hereinafter styled the Secretary, and **The City of San Diego,** a municipal corporation of the State of California, organized under a freeholders' charter, hereinafter referred to as the City;

Witnesseth:

Explanatory Recitals

Article 2. **Whereas,** for the puspose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water, and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary is also authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable as provided in the reclamation law; and

Article 3. **Whereas,** after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir; and

Article 4. **Whereas,** (a) there has been executed under date of December 1, 1932, a contract, herein styled Imperial Contract, between the United States and Imperial Irrigation District, an irrigation district created, or-

ganized and existing under and by virtue of the laws of the State of California, hereinafter referred to as the District, which contract provides for the construction of a suitable diversion dam and main canal and appurtenant structures, therein and hereinafter respectively styled "Imperial Dam" and "All-American Canal", located entirely within the United States, connecting with the Imperial and Coachella Valleys, and for the delivery to the District of stored water from Boulder Canyon Reservoir; and

(b) There has been executed under date of February 15, 1933, a contract between the United States and the City whereby the City was accorded certain storage rights under the conditions therein stated in said Boulder Canyon Reservoir, and the right under the conditions therein stated to have the United States deliver to the City at a point in the Colorado River immediately above Imperial Dam, the water to which the City may be entitled, (estimated in said contract to be 155 cubic feet per second), in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, set out in said contract; and

(c) The City is now desirous of entering into this contract for the construction of capacity for it in said Imperial Dam and All-American Canal for said 155 cubic feet of water per second, so that the City may transport through said canal for the benefit of the inhabitants of the City, and those of other cities and communities in San Diego County who may hereafter become entitled, with the consent of the Secretary, to use part of said stored water from Boulder Canyon Reservoir, under said contract of February 15, 1933, this contract to be in harmony with the provisions of said Imperial Contract; and

Article 5. **Whereas,** The Secretary has determined, upon engineering and economic considerations, that it is advisable to provide for the construction of said Imperial Dam and All-American Canal, and has determined that the revenues provided for by this contract are adequate in his judgment to insure payment of all expenses of construction, operation and maintenance of the capacity in said Imperial Dam and All-American Canal to be constructed hereunder, in the manner provided in the reclamation law;

Article 6. **Now, Therefore,** in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Construction by United States

Article 7. The United States will construct the Imperial Dam in the main stream of the Colorado River at the approximate location indicated on the map marked Exhibit "A" attached hereto and by this reference made a part hereof, and will also construct the Main (All American) Canal and Main (All American) Canal to Imperial Valley, the approximate location of said Canal to be as shown on the aforesaid Exhibit "A". Said Canal shall be so constructed as to provide a designed capacity of one hundred fifty-five (155) cubic feet of water per second, to be used by the City for the benefit of the inhabitants of said city and those of other cities and communities in San Diego County who may hereafter become entitled to use the same with the consent of the City and the Secretary, from and includng the diversion and desilting works at said dam to the westerly end of that portion of the All-American Canal designated on said Exhibit "A" as "Main (All American) Canal" and "Main (All

American) Canal to Imperial Valley". The ultimate cost to the City and the District of the Imperial Dam and All-American Canal shall in no event exceed the aggregate sum of thirty-million dollars ($30,000,000.00). Such cost shall include all expenses of whatsoever kind heretofore or hereafter incurred by the United States from the Reclamation Fund or the Colorado River Dam fund in connection with, growing out of, or resulting from the construction of said Imperial Dam and All-American Canal, including but not limited to the cost of labor, materials, equipment, engineering, legal work, superintendence, administration, overhead, any and all costs arising from operation and maintenance of said Imperial Dam and All-American Canal prior to the time that said costs are assumed respectively by the City and the District, damage of all kinds and character and rights of way as hereinafter provided. The City hereby agrees to repay to the United States its share of all expenditures incurred on account of any and all damages due to the existence, operation or maintenance of the Imperial Dam and All-American Canal, the incurrence of which increases expenditures by the United States beyond the said sum of thirty million dollars ($30,000,000.00). The City shall repay the same share of said expenditures as the share to be paid by the City under Article 10 (b) hereof of the capital cost of the particular part of said works causing such damage. The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it, without cost to the City, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owners of such lands for the value of improvements which may be destroyed, and the City agrees

that the United States may include such disbursements in the cost of the Imperial Dam and All-American Canal. If rights-of-way are required over an existing project of the Bureau of Reclamation, such sum or sums as may be necessary to reimburse the United States on account of the construction charges allocated to irrigable areas absorbed in such rights-of-way shall also be considered as a part of and be included with other costs of the Imperial Dam and All-American Canal. The City agrees that the District may convey to the United States, unencumbered fee simple title to any and all lands now owned by it which, in the opinion of the Secretary, may be required for right-of-way purposes for those portions of the Imperial Dam and All-American Canal to be used in common by the City and the District, at the fair market value thereof, to be determined by the Secretary, such value to be considered (as to the City) as a part of and included with other costs of the Imperial Dam and All-American Canal. Where rights-of-way within the State of California are required for the construction of Imperial Dam and All-American Canal, and such rights-of-way are not reserved to the United States under acts of Congress, or otherwise, or the lands over which such rights-of-way are required are not then owned by the District, the City agrees that the District, upon request of the Secretary, may acquire title to any such lands required for such purposes, and convey unencumbered fee simple title thereto to the United States at the actual cost thereof to the District, subject to the approval of such cost by the Secretary.

Operation and Maintenance of Common Works

Article 8. (a) Imperial Dam and All-American Canal designated on said Exhibit "A" as "Imperial Dam", "Main

(All American) Canal" and "Main (All American) Canal to Imperial" and Laguna Dam are herein styled "common works". Upon sixty (60) days' written notice from the Secretary of the completion of construction of the Imperial Dam and All-American Canal, or of any major unit thereof useful to the District and the City or either of them, as determined by the Secretary, whose determination thereof shall be final and binding upon the parties hereto, the District may assume the care, operation and maintenance of said common works, or major units thereof, and thereafter the District may care for, operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the diversion, transportation and distribution of water as when received from the United States, reasonable wear and damage by the elements excepted. The United States may, from time to time, in the discretion of the Secretary, resume operation and maintenance of said Imperial Dam upon not less than sixty (60) days' written notice and require reassumption thereof by the District on like notice. During such times, after completion, as Imperial Dam is operated and maintained by the United States, the City shall on March first of each year advance to the United States its share of the estimated cost of operation and maintenance for the following twelve months, upon estimates furnished therefor on or before September first next preceding. Such share to be advanced by the City shall be in the proportion that the capacity provided for the City in common works above Syphon Drop bears to the total capacity thereof.

(b) From and after the assumption by the District of operation and maintenance of said common works, or any major unit thereof of benefits to the City, the City

shall bear such proportion of the cost of operation and maintenance (including repairs and replacements and any charges made by the United States under Article Nine (9) hereof) of each component part of said common works, as the capacity provided for the City in such component part bears to the total capacity thereof. The City agrees, expressly for the benefit of the District, to advance to the District on or before January first of each year its said proportionate share of the estimated cost for that year of such operation and maintenance in accordance with a written notice to be issued to it by the District, provided that payment shall in no event be due until thirty (30) days after receipt of such notice. Prior to March first of each year the District shall provide the City with a written statement showing in detail the cost for the previous year for operation and maintenance of the works on account of which the City has made advances. Differences between actual costs and estimated costs shall be adjusted in the next succeeding notices. Upon request of the City, both the advance notice of estimated costs and the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided and the cost of such review shall be borne equally by the District and the City. The District may at its option withhold delivery of water from the City until its proportionate share of the cost of operation and maintenance has been advanced or paid as in this article provided and until all sums due the District under Article 10 (c) hereof have been paid.

In the event the United States fails to complete the works herein contemplated and the City fails to elect to

make use of works theretofore partially or wholly constructed, the City shall be fully relieved of any and all responsibility for maintenance or operation or damage to person or property which may arise therefrom.

Keeping Diversion Dam, Main Canal and Appurtenant Structures in Repair

Article 9. Except in case of emergency, no substantial change in any of the works to be constructed by the United States and transferred to the District under the provisions hereof or under said Imperial Contract shall be made by the District, without first having had and obtained the written consent of the Secretary and the Secretary's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto. The District shall promptly make any and all repairs to and replacements of all said works transferred to it under the terms and conditions hereof or under said Imperial Contract which, in the opinion of the Secretary, are deemed necessary for the proper operation and maintenance of such works. In case of neglect or failure of the District to make such repairs, the United States may, at its option, after reasonable notice to the District, cause such repairs to be made and charge the actual cost thereof, plus fifteen per centum (15%) to cover overhead and general expense, to the District. On or before September first of each calendar year the United States shall give written notice to the District of the amount expended by the United States for repairs under this article during the twelve-month period immediately preceding. Such cost, plus overhead and general expense as stated above, shall be repaid by the District on March first immediately succeeding.

Agreement by City to Pay for Capacity Constructed for It by the United States

Article 10. (a) The total estimated cost of the Imperial Dam and All-American Canal as stated in Article 10 of the said Imperial Contract, is thirty-eight million, five hundred thousand dollars ($38,500,000.00), of which not to exceed thirty million dollars ($30,000,000.00) represents the total estimated cost of Imperial Dam, the Main (All American) Canal, and the Main (All American) Canal to Imperial Valley. The City agrees to pay the United States its share, as defined in sub-article (b) of this Article, of the actual total cost not exceeding thirty million dollars ($30,000,000.00), incurred by the United States on account of such works, subject, however, to the provisions of Article seven (7) hereof; provided, that should Congress and other Governmental financing authorities fail to make necessary appropriations or allocations of money to complete the work herein provided for, then the Secretary may, at such reasonable time as he may consider advisable, after Congress and such other Governmental authorities shall have failed for five (5) consecutive years to make the necessary appropriations or allocations which shall have been annually requested by the Secretary, give the City notice of the termination of work by the United States and furnish a statement of the amount actually expended by the United States thereon. Upon the receipt of such notice by the City, the City shall be given two (2) years from and after such receipt of notice to elect whether it will utilize said works theretofore constructed hereunder, or some particular part thereof. Such election on the part of the City shall be expressed by resolution of the City Council submitted to

the electorate of the City for approval or rejection in the manner provided by law. If the City elects not to utilize, or fails within said two-year period to elect to utilize said works constructed hereunder, or some portion thereof, then the City shall have no further rights therein and no obligations therefor. If the City elects to utilize said works or a portion thereof, then the reasonable value to the City of the works so utilized, not exceeding the actual cost thereof to the United States, shall be paid by the City under the terms of this contract; the first payment to be due and payable on the first day of March following the first day of August next succeeding the final determination of the reasonable value to the City of such works, in case no further work is done by the City. Should the City elect to complete the work contemplated by this contract, or some portion thereof, the first payment shall be due and payable on the first day of March following the first day of August next succeeding the date of final completion of the work by the City as determined by the Secretary. In determining the value of such works to the City there shall be taken into account, among other things, the method of financing required and cost of money, so that in no event shall all of the works contemplated by this contract cost the City more than they would have cost the City had they all been constructed by the United States under the terms of this contract. In the event of failure of the parties to agree as to the reasonable value to the City of the works which the City elects to use, the same shall be determined as provided in Article twenty-two (22) hereof.

(b) The amounts herein agreed to be paid by the City to the United States shall be in accordance with the fol-

lowing proportions, which proportions the Secretary hereby determines to be equitable and just, to wit:

(i) That proportion of the total cost of that part of said common works above Syphon Drop, excepting Laguna Dam, that the capacity provided for the City therein bears to the total capacity thereof less the capacity to be provided without cost to and for the Yuma Project.

(ii) That proportion of the total cost of each component part of all said common works, other than the part above Syphon Drop, that the capacity provided for the City in such part of said works bears to the total capacity thereof.

(c) The City agrees to pay to the United States on the 31st day of December of each year commencing December 31, 1935, a portion (computed in the same manner as its share of costs of common works above Syphon Drop as agreed in Article 10 (b) (i) hereof) of each of the annual payments (together with interest required thereon), then or thereafter required to be made to the United States for a connection with Laguna Dam, under said contract dated October 23, 1918, and under Article sixteen (16) of said Imperial Contract.

The Secretary hereby determines that it is equitable and just that the City pay, and the City agrees, expressly for the benefit of the District, to pay the District the same proportion of the aggregate sum which shall have been paid by the District to the United States prior to December 31, 1935, for a connection with Laguna Dam, as aforesaid, as the proportion herein agreed to be paid by the City to the United States of payments hereafter to be

made for said connection with Laguna Dam. The aggregate sum to be paid by the City to the District shall be divided into ten (10) equal instalments, payable annually on March first of each year, commencing on or before the year 1939, with interest from date hereof on unpaid balance at the rate of six per centum (6%) per annum, payable March 1st, 1936, and annually thereafter. At its option, the City may at any time pay any amount on principal of said aggregate sum in advance of the due date and interest on the amount so paid shall thereupon cease.

Terms of Payment

Article 11. The amount herein agreed to be paid to the United States shall be due and payable in not more than thirty-eight (38) annual instalments commencing with the calendar year next succeeding the year when notice of completion of all work provided for herein is given to the City or under the provisions of Article 10 (a) hereof upon termination of work through failure of Congress or other Governmental authorities to make necessary appropriations or allocations therefor. The first five (5) of such annual instalments shall each be one percentum (1%) of the amount herein agreed to be paid to the United States; the next ten (10) of such instalments shall each be two percentum (2%) of the amount herein agreed to be paid to the United States, the next twenty-one (21) of such instalments shall each be three percentum (3%) of the amount herein agreed to be paid to the United States, and the remainder of such annual instalments shall each be six percentum (6%) of the amount herein agreed to be paid to the United States. The sums payable annually as set forth above shall be divided into two (2) equal semi-annual payments, payable on March first and September first of

each year; provided, however, that if notice of the completion of work is given to the City subsequent to August first of any year the first semi-annual instalment of charges hereunder shall be due and payable on March first of the second succeeding year.

Operation and Maintenance Costs

Article 12. Each agency which hereafter contracts for capacity to be provided for it in Imperial Dam and All-American Canal and for which agency capacity is so provided shall bear such proportionate part of the cost of operation and maintenance (including repairs and replacements) of the component parts of Imperial Dam and All-American Canal and of the Laguna Dam as may be determined by the Secretary to be equitable and just, but not less than an amount in proportion to the total amount as are the relative capacities provided in each component part for such agency and for all other agencies, including the City. Each such agency shall advance to the District operating the works provided to be used in common by the District and the City and such agency on or before January first of each year, its proportionate share of the estimated cost for that year of operation and maintenance in accordance with a notice to be issued by the District, provided that payment shall in no event be due until thirty (30) days after receipt of notice. Prior to March 1st of each year the District shall provide each agency with a statement showing in detail the costs for the previous year for operation and maintenance of the works on account of which such agency has made advances. Differences between actual costs and estimated costs shall be adjusted in next succeeding notices. Upon request of any agency, both the advance notice of estimated costs and

the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided, and the cost of such review shall be borne equally by the requesting agency and the District. The District may, at its option, withhold the delivery of water from any agency until its proportionate share of the costs of operation and maintenance has been advanced or paid, as in this Article provided.

Power Possibilities

Article 13. The power possibilities on the All-American Canal down to and including Syphon Drop with water carried for the benefit of the Yuma Project as provided for in Article fourteen (14) hereof, are hereby reserved to the United States. Subject to this reservation and the participation by other agencies as provided for in Article seventeen (17) hereof, the City shall have the privilege of utilizing by contract or otherwise, by means of the capacity to be provided for the City hereunder, such power possibilities, including those at or near Pilot Knob, as may exist upon said canal in proportion to its relative contribution or obligation toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located; provided, that such privilege shall not interfere with the utilizing by the District of such power possibilities at or near Pilot Knob, by means of the capacity to be provided for the District in the All-American Canal from Syphon Drop to Pilot Knob, in excess of eight thousand five hundred (8,500) cubic feet of water per second. The net proceeds as hereinafter defined in Article twenty-seven

(27) hereof, and as determined by the Secretary for each calendar year, from any power development which the City is hereunder authorized to make, shall be paid into the Colorado River Dam fund on March first of the next succeeding calendar year and be credited to the City on this contract until the City shall have paid thereby and/or otherwise an amount of money equivalent to that herein agreed to be paid to the United States. Thereafter such net power proceeds shall belong to the City. It is agreed that in the event the net power proceeds in any calendar year, creditable to the City, shall exceed the annual instalment of charges payable under this contract during the then current calendar year, the excess of such net power proceeds shall be credited on the next succeeding unpaid instalment to become due from the City under this contract.

Diversion and Delivery of Water for Yuma Project

Article 14. The City hereby consents that there be diverted at the Imperial Dam, and transported and delivered at Syphon Drop and/or such intermediate points as may be designated by the Secretary, the available water to which the Yuma Project (situated entirely within the United States and not exceeding in area 120,000 acres plus lands lying between the project levees and the Colorado River as such levees were located in 1931) is entitled, not exceeding two thousand (2,000) second-feet of water in the aggregate, or such part thereof as the Secretary may direct, for the use and benefit of said project, including the development of power at Syphon Drop, such water to be diverted, transported and delivered continuously in so far as reasonable diligence will permit; provided, however, that water shall not be diverted, transported, or delivered

for the Yuma Project when the Secretary notifies the District that said project for any reason may not be entitled thereto; provided, further that there may be diverted, transported and delivered such water in excess of requirements for irrigation or potable purposes, as determined by the Secretary, on the Yuma Project as so limited, only when such water is not required by the City under the provisions of its said contract of February 15, 1933. The diversion, transportation and delivery of water for the Yuma Project as aforesaid shall be without expense to the United States or its successors in control of said project, as to capital investment required to provide facilities for such diversion and transportation of water except such checks, turnouts and other structures required for delivery from said canal.

Contract of October 23, 1918

Article 15. That certain contract between The United States of America and the District, bearing date of October 23, 1918, providing for a connection with Laguna Dam, having been terminated, except as to the provisions of Article nine (9) thereof, by said Imperial Contract, the City hereby consents to such partial termination of said first mentioned contract. The City hereby consents that there be furnished to the United States or its successors in interest in the control, operation and maintenance of the Yuma Project, from any power development on the All-American Canal at or near Pilot Knob, up to but not to exceed four thousand horsepower of electrical energy for use by the agency in charge of project operations for irrigation and drainage pumping purposes and necessary incidental use on said Yuma Project, such power to be fur-

nished at cost (including overhead and general expense) plus ten per cent; provided, however, that such power at or near Pilot Knob shall not be required to be furnished except at such times as all power feasible of development at Syphan Drop or developed elsewhere within a radius of forty (40) miles from the City of Yuma for the benefit of the Yuma Project is being used for project operations as in this article specified.

Refusal of Water in Case of Default

Article 16. The United States reserves the right to refuse to deliver water to the City in the event of default for a period of more than twelve (12) months in any payment due the United States under this contract, or in the discretion of the Secretary to reduce deliveries in such proportion as the amount in default by the City bears to the total amount due. The United States further reserves the right to forthwith assume control of all or any part of the works to be constructed hereunder and to care for, operate and maintain the same, so long as the Secretary deems necessary or advisable, if, in his opinion, which shall be final and binding upon the parties hereto, the City does not carry out the terms and conditions of this contract to their full extent and meaning. In such event, the City's pro rata share of the actual cost of such care, operation and maintenance by the United States shall be repaid to the United States, plus fifteen per centum (15%) to cover overhead and general expense, on March first of each year immediately succeeding the calendar year during which said works are operated and maintained by the United States. Nothing herein contained shall relieve the City of the obligation to pay in any event all instalments and penalties provided in this contract.

Use of Works by the United States and Others

Article 17. The United States also reserves the right to, and the City agrees that it may, at any time prior to the transfer of constructed works to the District for operation and maintenance, increase the capacity of such works and contract for such increased capacity with other agencies for the delivery of water for use in the United States. Such other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. In the event other agencies thus contract with the United States, each of such agencies shall assume such proportion of the total cost of said works to be used jointly by such agency and the City, including Laguna Dam, as the Secretary may determine to be equitable and just, but not less than the proportion that the capacity provided for such agency in such works bears to the total capacity thereof (except in that part thereof above Syphon Drop including Laguna Dam, in which part the proportion which such other agency shall assume shall be not less than the proportion that the capacity provided for such agency therein bears to the total capacity thereof less the capacity to be provided without cost to and for the Yuma Project) and the City's financial obligations under this Contract shall be adjusted accordingly. In no event shall construction costs chargeable to the City be increased by reason of additional capacity being provided for any such agency or agencies or contract or contracts having been made with same. Any such agency thus contracting

shall also be required to reimburse the City in such amounts and at such times as the Secretary may determine to be equitable and just for payments theretofore made by the City for the right to use Laguna Dam.

Title to Remain in the United States

Article 18. Title to the aforesaid Imperial Dam and All-American Canal shall be and remain in the United States notwithstanding transfer of the care, operation and maintenance thereof to said District or other agency; provided, however, that the Secretary may, in his discretion, when repayment to the United States of all moneys advanced shall have been made, transfer the title to said main canal and appurtenant structures, except the diversion dam and the main canal and appurtenant structures down to and including Syphon Drop, to the District, the City or other agencies in the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him.

Rules and Regulations

Article 19. There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract governing the diversion and delivery of water hereunder to or for the City and to other contractors. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the City and opportunity for it to be heard, as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof, or to protect the interests of the United States. The City

hereby agrees that in the operation and maintenance of the Imperial Dam and All-American Canal, all such rules and regulations will be fully adhered to by it.

Inspection by the United States

Article 20. The Secretary may cause to be made from time to time a reasonable inspection of the works constructed by the United States to the end that he may ascertain whether the terms of this and other contracts are being satisfactorily executed by the City and/or other agencies. Such proportion of the actual expense of such inspection in any calendar year, as shall be found by the Secretary to be equitable and just, shall be paid by the City to the United States on March first of each year immediately following the year in which such inspection is made, and upon statement to be furnished by the Secretary. The Secretary or his representative shall at all times have the right of ingress to and egress from all works of the City for the purpose of inspection, repairs and maintenance of works of the United States, and for all other purposes.

Access to Books and Records

Article 21. The officials or designated representatives of the City shall have full and free access to the books and records of the United States, so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same; and the Secretary shall have the same right in respect of the books and records of the City.

Disputes or Disagreements

Article 22. Disputes or disagreements as to the interpretation or performance of the provisions of this con-

tract, except as otherwise provided herein, shall be determined either by arbitration or court proceedings; the Secretary being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the City shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within thirty (30) days after their first meeting, such arbitrators not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Interest and Penalties

Article 23. No interest shall be charged on any instalments of charges due from the City hereunder except that on all such instalments or any part thereof, which may remain unpaid by the City to the United States after the same become due, there shall be added to the amount unpaid a penalty of one-half of one per centum (½%) and a like penalty of one-half of one per centum (½%) of the amount unpaid shall be added on the first day of each month thereafter so long as such default shall continue.

Agreement Subject to Colorado River Compact

Article 24. This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, No-

vember 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which compact was approved by the Boulder Canyon Project Act.

Application of Reclamation Law

Article 25. Except as provided by the Boulder Canyon Project Act, the reclamation law shall govern the construction, operation and maintenance of the works to be constructed hereunder.

Contracts to Be Authorized by Election of Electors of City

Article 26. The execution of this contract by the City shall be authorized by the vote of two-thirds of the qualified electors of the City voting at an election to be held for that purpose, assenting that the City incur the indebtedness and liability of this contract, and authorizing and directing the City Council to levy annually a tax sufficient to provide for the payment to the United States each year when due each and every of the annual obligations of the City under this contract, or any portion thereof not paid from revenues derived from other sources. The City shall without delay and at its own cost and expense furnish the United States for its files, copies of all proceedings relating to the election upon this contract, which said copies shall be properly certified by the City Clerk of The City of San Diego.

Method of Determining Net Power Proceeds

Article 27. In determining the net proceeds for each calendar year from any power development which the City is hereunder authorized to make, on the All-American Canal, to be paid into the Colorado River Dam fund as provided in Article thirteen (13) hereof, there shall be taken into consideration all items of cost of production of power, including but not necessarily limited to amortization of and interest on capital investment in power development, replacements, improvements, and operation and maintenance, if any. Any other proper factor of cost not here expressly enumerated may be taken into account in determining the net proceeds.

Contingent Upon Appropriations

Article 28. This contract is subject to appropriations or allocations being made by Congress or other Governmental financing authority from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam fund to permit of said allotments. If more than three years elapse after this contract becomes effective and before appropriations or allocations are available to permit the United States to make expenditures hereunder, the City may, at its option, upon giving sixty (60) days' written notice to the Secretary, cancel this contract. Such option shall be expressed by vote of the electors of the City with the same formalities as required for the authorization of this contract.

Rights Reserved Under Section 3737 Revised Statutes

Article 29. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract Not Exclusive

Article 30. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States, the City, or the District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Interest in Contract Not Transferable.

Article 31. No interest in this contract is transferable by the City to any other party, without the consent of the United States, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Member of Congress Clause

Article 32. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By HAROLD L. ICKES
~~Federal Emergency Administration of Public Works and~~
[COG JLK MW]
Secretary of the Interior.

[Seal]

THE CITY OF SAN DIEGO,
By RUTHERFORD B. IRONES
Mayor.

[Seal]

Approved as to form and legality:
D. L. AULT
City Attorney.

Attest:
ALLEN H. WRIGHT
City Clerk

(Seal)

State of California, County of San Diego—ss.

On this 30th day of October, 1939, before me, Fred W. Sick, a Notary Public in and for the said County of San Diego, State of California, residing therein. duly commissioned and sworn, personally appeared Rutherford B. Irones personally known to me to be the person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the County of San Diego, the day and year in this certificate first above written.

FRED W. SICK
Notary Public in and for the County of San Diego,
State of California

[Seal]

My Commission expires May 22, 1943.

APPENDIX NO. 16

WATER DELIVERY AND REPAYMENT CONTRACT: UNITED STATES AND COACHELLA VALLEY COUNTY WATER DISTRICT

October 15, 1934

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
BOULDER CANYON PROJECT
ALL-AMERICAN CANAL
COACHELLA VALLEY COUNTY WATER DISTRICT.

Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water.

Article 1. This Contract, made this 15 day of October, nineteen hundred thirty-four, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat., 1057), designated the Boulder Canyon Project Act, and the Act of Congress approved June 16, 1933 (48 Stat., 195), designated the National Industrial Recovery Act, between The United States of America, hereinafter referred to as the United States, acting for this purpose by Harold L. Ickes, Federal Emergency Administrator of Public Works and Secretary of the Interior, hereinafter styled the Secretary, and Coachella Valley County Water District, a County Water District created, organized and existing under and by virtue of the County Water District

Act of the State of California, and acts amendatory thereof or supplementary thereto, with its principal place of business at Coachella, Riverside County, California, hereinafter referred to as the District;

Witnesseth:

Explanatory Recitals

Article 2. Whereas, for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty-million acre-feet of water, and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary is also authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable as provided in the reclamation law; and

Article 3. Whereas, after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir; and

Article 4. Whereas, (a) there are included within the boundaries of the District areas of private and public lands and additional private and public lands will, by appropriate proceedings, be added to the District and to the Coachella Service Area, defined in Article 17 hereof; and

(b) There has been executed under date of December 1, 1932, a contract, herein styled Imperial Contract, between the United States and Imperial Irrigation District, an irrigation district created, organized and existing under and by virtue of the laws of the State of California, which contract provides for the construction of a suitable diversion dam and main canal and appurtenant structures, therein and hereinafter respectively styled "Imperial Dam" and "All-American Canal", located entirely within the United States, connecting with the Imperial and Coachella Valleys, and for the delivery to said Imperial Irrigation District of stored water from Boulder Canyon Reservoir; and

(c) Certain controversies between said two districts relating to their respective interests in water and power on said All-American Canal have been settled and compromised by an agreement executed between said two districts, dated February 14th, 1934, a triplicate original of which said agreement was on July 3, 1934, filed with the Secretary; and

(d) The District is desirous of entering into a contract for the construction of certain capacity for it in said Imperial Dam and All-American Canal and for the delivery to the District, for the benefit of the lands under or that will be served from the All-American Canal in Coachella Valley, now or hereafter within the District and lying within said Coachella Service Area, of stored water

from Boulder Canyon Reservoir, such contract to be in harmony with the provisions of said Imperial Contract and those of said agreement dated February 14th, 1934; and

Article 5. Whereas, The Secretary has determined, upon engineering and economic considerations, that it is advisable to provide for the construction of such Imperial Dam and All-American Canal, and has determined that the revenues provided for by this contract are adequate in his judgment to insure payment of all expenses of construction, operation and maintenance of the capacity in said Imperial Dam and All-American Canal to be constructed hereunder, in the manner provided in the reclamation law;

Article 6. Now, Therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to-wit:

Construction by United States

Article 7. The United States will construct the Imperial Dam in the main stream of the Colorado River at the approximate location indicated on the map marked Exhibit "A" attached hereto and by this reference made a part hereof, and will also construct the All-American Canal to the Imperial and Coachella Valleys, the approximate location of said canal to be as shown on the aforesaid Exhibit "A". Said canal shall be so constructed as to provide a designed capacity of one thousand five hundred (1500) cubic feet of water per second, to be used by the District for the benefit of the lands now or hereafter within the District and lying within said Coachella Service Area, from and including the diversion and desilting works at said dam to the southerly end of that portion

of the All-American Canal designated on said Exhibit "A" as "Main (All American) Canal to Coachella Valley" (hereinafter styled "Coachella Main Canal"). Said Coachella Main Canal shall be constructed with such capacities as the Secretary may conclusively determine to be necessary or advisable upon engineering or economic considerations to accomplish the ends contemplated by this contract; provided, however, that changes in capacities, locations, lengths and alignments, may be made during the progress of the work as may, in the opinion of the Secretary, whose opinion shall be final and binding upon the parties hereto, be expedient, economical, necessary or advisable, except the capacity above indicated from and including the diversion and desilting works at Imperial Dam to the Southerly end of said Coachella Main Canal, which capacity may be changed only by mutual agreement between the Secretary and the District. The ultimate cost to said two districts of the Imperial Dam and All-American Canal shall in no event exceed the aggregate sum of thirty-eight million, five hundred thousand dollars ($38,500,000.00). Such cost shall include all expenses of whatsoever kind heretofore or hereafter incurred by the United States from the Reclamation Fund or the Colorado River Dam fund in connection with, growing out of, or resulting from the construction of said Imperial Dam and All-American Canal, including but not limited to the cost of labor, materials, equipment, engineering, legal work, superintendence, administration, overhead, any and all costs arising from operation and maintenance of said Imperial Dam and All-American Canal prior to the time that said costs are assumed respectively by the said two districts, damage of all kinds and character and rights-of-way as hereinafter provided.

The District hereby agrees to re-pay to the United States its share of all expenditures incurred on account of any and all damages due to the existence, operation or maintenance of the diversion dam and main canal, the incurrence of which increases expenditures by the United States beyond said sum of $38,500,000.00. The District shall re-pay the same share of said expenditures as the share to be paid by the District under Article 10 (b) hereof of the capital cost of the particular part of said works causing such damage. The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it, without cost to the District, except that the United States reserves the right where rights-of-way are thus acquired to reimburse the owners of such lands for the value of improvements which may be destroyed, and the District agrees that the United States may include such disbursements in the cost of the Imperial Dam and All-American Canal. If rights-of-way are required over an existing project of the Bureau of Reclamation, such sum or sums as may be necessary to reimburse the United States on account of the construction charges allocated to irrigable areas absorbed in such rights-of-way shall also be considered as a part of and be included with other costs of the Imperial Dam and All-American Canal. The District agrees to convey to the United States without cost, unencumbered fee simple title to any and all lands now owned by it which, in the opinion of the Secretary, may be required for right-of-way purposes for the Imperial Dam and All-American Canal; and the District agrees that Imperial Irrigation District may convey to the United States, unencumbered fee simple title to any and all lands now owned by it which, in the opinion of

the Secretary, may be required for right-of-way purposes for those portions of the Imperial Dam and All-American Canal to be used in common by said two districts, at the fair market value thereof, to be determined by the Secretary, such value to be considered (as to the District) as a part of and included with other costs of the Imperial Dam and All-American Canal. Where rights-of-way within the State of California are required for the construction of Imperial Dam and All-American Canal, and such rights of way are not reserved to the United States under Acts of Congress, or otherwise, or the lands over which such rights of way are required are not then owned by either of said two districts, then the District agrees, (a) that it will, upon request of the Secretary, acquire title to such lands required for such purposes as lie north of the lowest turnout for East Mesa on said Coachella Main Canal, and in turn convey unencumbered fee simple title thereto to the United States at the actual cost thereof to the District, subject to the approval of such cost by the Secretary; and (b) agrees that Imperial Irrigation District, upon request of the Secretary, may acquire title to any such lands required for such purposes as lie south of the Northerly boundary line of Township Eleven (11), South of the San Bernardino Base Line, and likewise convey unencumbered fee simple title thereto to the United States at the actual cost thereof to the Imperial Irrigation District, subject to the approval of such cost by the Secretary.

Assumption of Operation and Maintenance of Common and Separate Works

Article 8(a). Imperial Dam and All-American Canal and Laguna Dam except (i) that portion of said Coachella Main Canal lying North of the lowest turnout for East

Mesa and (ii) that portion of the All-American Canal lying West of the Southerly end of said Coachella Main Canal and designated on said Exhibit "A" as "Main (All American) Canal to Imperial Valley" are herein styled "common works". Upon sixty (60) days written notice from the Secretary of the completion of construction of the Imperial Dam and All-American Canal, or of any major unit thereof useful to said two districts or either of them, as determined by the Secretary, whose determination thereof shall be final and binding upon the parties hereto, said Imperial Irrigation District may assume the care, operation and maintenance of said common works, or major units thereof, and thereafter said Imperial Irrigation District may care for, operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the diversion, transportation and distribution of water as when received from the United States, reasonable wear and damage by the elements excepted. The United States may, from time to time, in the discretion of the Secretary, resume operation and maintenance of said Imperial Dam upon not less than sixty (60) days written notice and require reassumption thereof by said Imperial Irrigation District on like notice. During such times, after completion, as the Imperial Dam is operated and maintained by the United States, the District shall on March first of each year advance to the United States its share of the estimated cost of operation and maintenance for the following twelve months, upon estimates furnished therefor on or before September first next preceding. Such share to be advanced by the District shall be in the proportion that the capacity provided for the District in common works above Syphon Drop bears to the total capacity thereof.

(b) From and after the assumption of operation and maintenance of said common works or any major unit thereof, by Imperial Irrigation District, the District shall bear such proportion of the cost of operation and maintenance (including repairs and replacements and any charges made by the United States under Article Nine (9) hereof) of each component part of said common works, as the capacity provided for the District in such component part bears to the total capacity thereof. The District agrees, expressly for the benefit of Imperial Irrigation District, to advance to Imperial Irrigation District on or before January first of each year its said proportionate share of the estimated cost for that year of such operation and maintenance in accordance with a written notice to be issued to it by Imperial Irrigation District, provided that payment shall in no event be due until thirty (30) days after receipt of such notice. Prior to March first of each year Imperial Irrigation District shall provide the District with a written statement showing in detail the cost for the previous year for operation and maintenance of the works on account of which the District has made advances. Differences between actual costs and estimated costs shall be adjusted in next succeeding notices. Upon request of the District, both the advance notice of estimated costs and the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided and the cost of such review shall be borne equally by said two districts. The Imperial Irrigation District may at its option withhold delivery of water from the District until its proportionate share of the costs of operation and maintenance

has been advanced or paid, as in this article provided and until all sums due Imperial Irrigation District under Article 10 (c) hereof have been paid.

(c) Upon sixty (60) days written notice from the Secretary of the completion of construction of the Coachella Main Canal and appurtenant structures or of any major unit thereof useful to the District, as determined by the Secretary, whose determination thereof shall be final and binding on the parties hereto, the District shall assume the care, operation and maintenance of all such works north of the lowest turnout for East Mesa on said Coachella Main Canal, and thereafter the District shall, at its own cost and without expense to the United States, care for, operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the transportation and distribution of water as when received from the United States, reasonable wear and damage by the elements excepted.

Upon like notice Imperial Irrigation District may assume the care, operation and maintenance, at its own cost, of all works designated on said Exhibit "A" as "Main (All American) Canal to Imperial Valley", lying west of the southerly end of the Coachella Main Canal.

(d) After the care, operation and maintenance of any of the aforesaid works have been assumed by the District, the District shall save the United States, its officers, agents and employees harmless as to any and all injury and damage to persons and property which may arise out of the care, operation and maintenance thereof. In the event the United States fails to complete the works herein contemplated and the District fails to elect to make use of works theretofore partially or wholly constructed, the

District shall be fully relieved of any and all responsibility for any further operation and maintenance of any works theretofore taken over by the District for that purpose and thereupon the District shall no longer be responsible for said maintenance or operation or damage to person or property which may arise therefrom.

Keeping Diversion Dam, Main Canal and Appurtenant Structures in Repair

Article 9. Except in case of emergency no substantial change in any of the works to be constructed by the United States and transferred to either of said two districts under the provisions hereof or under said Imperial Contract shall be made by such district, without first having had and obtained the written consent of the Secretary and the Secretary's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto. Such district shall promptly make any and all repairs to and replacements of all said works transferred to it under the terms and conditions hereof or under said Imperial Contract which, in the opinion of the Secretary, are deemed necessary for the proper operation and maintenance of such works. In case of neglect or failure of such district to make such repairs, the United States may, at its option, after reasonable notice to such district, cause such repairs to be made and charge the actual cost thereof, plus fifteen per centum (15%) to cover overhead and general expense to such district operating the works so repaired. On or before September first of each calendar year the United States shall give written notice to such district operating such works of the amount expended by the United States for repairs under this

article during the twelve-month period immediately preceding. Such cost, plus overhead and general expense as stated above, shall be repaid by such district operating such works on March first immediately succeeding.

Agreement by District to pay for Works Constructed by the United States

Article 10. (a) The District agrees to pay the United States its share, as defined in sub-article (b) of this Article, of the actual cost, not exceeding thirty-eight million five hundred thousand dollars ($38,500,000.00), incurred by the United States on account of the Imperial Dam and All-American Canal, subject, however, to the provisions of Article seven (7) hereof; provided, that should Congress and other Governmental financing authorities fail to make necessary appropriations or allocations of money to complete the work herein provided for, then the Secretary may, at such reasonable time as he may consider advisable, after Congress and such other Governmental authorities shall have failed for five (5) consecutive years to make the necessary appropriations or allocations which shall have been annually requested by the Secretary, give the District notice of the termination of work by the United States and furnish a statement of the amount actually expended by the United States thereon. Upon the receipt of such notice by the District, the District shall be given two (2) years from and after such receipt of notice to elect whether it will utilize said works theretofore constructed hereunder, or some particular part thereof. Such election on the part of the District shall be expressed by resolution of the Board of Directors submitted to the

electorate of the District for approval or rejection in the manner provided by law for submission of contracts with the United States. If the District elects not to utilize, or fails within said two-year period to elect to utilize said works constructed hereunder, or some portion thereof, then the District shall have no further rights therein and no obligations therefor. If the District elects to utilize said works or a portion thereof, then the reasonable value to the District of the works so utilized, not exceeding the actual cost thereof to the United States, shall be paid by the District under the terms of this contract; the first payment to be due and payable on the first day of March following the first day of August next succeeding the final determination of the reasonable value to the District of such works, in case no further work is done by the District. Should the District elect to complete the work contemplated by this contract, or some portion thereof, the first payment shall be due and payable on the first day of March following the first day of August next suuceeding the date of final completion of the work by the District as determined by the Secretary. In determining the value of such works to the District there shall be taken into account, among other things, the method of financing required and cost of money, so that in no event shall all of the works contemplated by this contract cost the District more than they would have cost the District had they all been constructed by the United States under the terms of this contract. In the event of failure of the parties to agree as to the reasonable value to the District of the works which the District elects to use, the same shall be determined as provided in Article twenty-six (26) hereof.

(b) The amounts herein agreed to be paid by the District to the United States shall be in accordance with the following proportions, which proportions the Secretary hereby determines to be equitable and just, to-wit:

i. That proportion of the total cost of that part of said common works above Syphon Drop, excepting Laguna Dam, that the capacity provided for the District therein bears to the total capacity thereof less the capacity to be provided without cost to and for the Yuma project.

ii. That proportion of the total cost of each component part of all said common works, other than the part above Syphon Drop, that the capacity provided for the District in such part of said works bears to the total capacity thereof.

iii. The entire cost of all works North of the lowest turnout for East Mesa on the Coachella Main Canal.

(c) The District agrees to pay to the United States on the 31st day of December of each year commencing December 31, 1935, a portion (computed in the same manner as its share of costs of common works above Syphon Drop as agreed in Article 10 (b) i. hereof) of each of the annual payments (together with interest required thereon,) then or thereafter required to be made by Imperial Irrigation District to the United States for a connection with Laguna Dam, under its contract dated October 23, 1918, and under Article sixteen (16) of said Imperial Contract, or otherwise.

The Secretary hereby determines that it is equitable and just that the District pay, and the District agrees, expressly for the benefit of Imperial Irrigation District,

to pay Imperial Irrigation District the same proportion of the aggregate sum which shall have been paid by Imperial Irrigation District to the United States prior to December 31, 1935, for a connection with Laguna Dam, as aforesaid, as the proportion herein agreed to be paid by the District to the United States of payments hereafter to be made for said connection with Laguna Dam. The aggregate sum to be paid by the District to Imperial Irrigation District shall be divided into ten equal installments, payable annually on March first of each year, commencing on or before the year 1939, with interest from date hereof on unpaid balances at the rate of six per centum (6%) per annum, payable March 1st, 1936, and annually thereafter. At its option, the District may at any time pay any amount on principal of said aggregate sum in advance of the due date and interest on the amount so paid shall thereupon cease.

(d) The lands now in the District, which are also situate in the Coachella Service Area, as defined in Article seventeen (17) hereof, are designated and described in statement hereto attached, marked Exhibit "B" and by this reference made a part hereof. The Board of Directors of the District does hereby declare, determine and find, and has by the ordinance by which it authorized the execution of this contract, declared, determined and found that only that portion of the District within said area described in said Exhibit "B" is susceptible of service with water from the waterworks contemplated under this contract and that said area shall be and constitute Improvement District No. 1 of the District. Said Board of Directors does further declare, determine and find and has, by said ordinance, declared, determined and found that that portion of said Coachella Service Area not

now in the District, of which description is hereto attached, marked Exhibit "C" and by this reference made a part hereof, (hereinafter styled "Salton Area"), is also susceptible of service from said waterworks, and that if and when said area described in Exhibit "C" is added to the District, said area shall also be added to, and entitled to the same benefits and subject to the same obligations as the lands in said Improvement District No. 1. Said Board of Directors does further declare, determine and find and has, by said ordinance, declared, determined and found, that those certain lands in said Coachella Service Area and not now in the District, (i) shown on said Exhibit "A" as enclosed within a hatched border line and marked "Dos Palmas Area", of which description is hereto attached, marked Exhibit "D" and by this reference made a part hereof, and (ii) shown on said Exhibit "A" as bounded on the East, South and West by a like hatched border line and on the North by the North boundary line of Imperial County and lying West of Salton Sea, (herein styled "Fish Springs Area") of which description is hereto attached, marked Exhibit "E" and by this reference made a part hereof, are also susceptible of service from said waterworks and that if and when said Dos Palmas Area, or any part thereof, is added to the District, it shall be and constitute Improvement District No. 2 of the District, and that if and when said Fish Springs Area, or any part thereof, is added to the District, it shall be and constitute Improvement District No. 3 of the District.

All lands now or hereafter situate both in said Coachella Service Area and in the District are, as a whole, obligated to pay to the United States the full amount herein agreed upon, regardless of the default or failure of any tract,

or of any landowner, in the payment of the taxes levied by the District against such tract or landowner, and the District shall, when necessary, levy and collect appropriate taxes to make up for the default or delinquency of any such tract of land or of any such landowner in the payment of taxes, so that in any event, and regardless of any defaults or delinquencies in the payment of any tax or taxes, the amounts due or to become due the United States shall be paid to the United States by the District when due. No lands in the District shall be charged with any taxes or assessments under this contract except those situate within said Coachella Service Area, as defined in Article seventeen (17) hereof, or as thereunder modified.

The Improvement District above mentioned are hereby required to be constituted and created as nearly as may be, in the Manner prescribed in said County Water District Act for creation of Improvement Districts in County Water Districts in case of ordinary issuance of bonds.

Changes in Boundaries of Coachella Service Area

Article 11. After the date of this contract no change shall be made in the boundaries of the Coachella Service Area as defined in Article seventeen (17) hereof and the Board of Directors shall make no order changing the boundaries of said Coachella Service Area except as provided in said Article seventeen (17); provided, however, that the Secretary hereby consents to the inclusion in said Coachella Service Area of all of the lands described on Exhibits "B", "C", "D" and "E" hereto attached.

Terms of Payment

Article 12. The amount herein agreed to be paid to the United States shall be due and payable in not more

than forty (40) annual installments commencing with the calendar year next succeeding the year when notice of completion of all work provided for herein is given to the District or under the provisions of Article 10 (a) hereof upon termination of work through failure of Congress and other Governmental authorities to make necessary appropriations or allocations therefor. The first five (5) of such annual installments shall each be one per centum (1%) of the amount herein agreed to be paid to the United States; the next ten (10) of such installments shall each be two per centum (2%) of the amount herein agreed to be paid to the United States, and the remainder of such annual installments shall each be three per centum (3%) of the amount herein agreed to be paid to the United States. The sums payable annually as set forth above shall be divided into two (2) equal semi-annual payments, payable on March first and September first of each year; provided, however, that if notice of the completion of work is given to the District subsequent to August first of any year the first semi-annual installment of charges hereunder shall be due and payable on March first of the second succeeding year.

Operation and Maintenance Costs

Article 13. Each agency which hereafter contracts for capacity to be provided for it in Imperial Dam and All-American Canal and for which agency capacity is so provided shall bear such proportionate part of the cost of operation and maintenance (including repairs and replacements) of the component parts of Imperial Dam and All-American Canal and of the Laguna Dam as may be determined by the Secretary to be equitable and just, but not less than an amount in proportion to the total amount as are the relative capacities provided in each component

part for such agency and for all other agencies, including the District. Each such agency shall advance to each district operating any works provided to be used in common by such district and such agency on or before January first of each year, its proportionate share of the estimated cost for that year of operation and maintenance in accordance with a notice to be issued by such district, provided that payment shall in no event be due until thirty (30) days after receipt of notice. Prior to March 1st of each year each such district shall provide each agency with a statement showing in detail the costs for the previous year for operation and maintenance of the works on account of which such agency has made advances. Differences between actual costs and estimated costs shall be adjusted in next succeeding notices. Upon request of any agency, both the advance notice of estimated costs and the subsequent statement of actual costs for each year shall be reviewed by the Secretary and his determination of proper charges shall be final. Such review shall not change the due date for advance payments as herein provided, and the cost of such review shall be borne equally by the requesting agency and such district. Such district may, at its option, withhold the delivery of water from any agency until its proportionate share of the costs of operation and maintenance have been advanced or paid, as in this article provided.

Power Possibilities

Article 14. The power possibilities on the All-American Canal down to and including Syphon Drop with water carried for the benefit of the Yuma Project as provided for in Article fifteen (15) hereof, are hereby reserved to the United States. Subject to this reservation

and the participation by other agencies as provided for in Article twenty-one (21) hereof, the District shall have the privilege of utilizing by contract or otherwise, by means of the capacity to be provided for the District hereunder, such power possibilities, including those at or near Pilot Knob, as may exist upon said canal in proportion to its relative contribution or obligation toward the capital cost of said canal and appurtenent structures from and including the diversion works to the point where each respective power plant may be located; provided, that such privilege shall not interfere with the utilizing by Imperial Irrigation District of such power possibilities at or near Pilot Knob, by means of the capacity to be provided for Imperial Irrigation District in the All-American Canal from Syphon Drop to Pilot Knob, in excess of 8,500 cubic feet of water per second. The net proceeds as hereinafter defined in Article thirty-one (31) hereof, and as determined by the Secretary for each calendar year, from any power development which the District is hereunder authorized to make, shall be paid into the Colorado River Dam fund on March first of the next succeeding calendar year and be credited to the District on this contract until the District shall have paid thereby and/or otherwise an amount of money equivalent to that herein agreed to be paid to the United States. Thereafter such net power proceeds shall belong to the District. It is agreed that in the event the net power proceeds in any calendar year, creditable to the District, shall exceed the annual installment of charges payable under this contract during the then current calendar year, the excess of such net power proceeds shall be credited on the next succeeding unpaid installment to become due from the District under this contract.

Diversion and Delivery of Water for Yuma Project

Article 15. The District hereby consents that there be diverted at the Imperial Dam, and transported and delivered at Syphon Drop and/or such intermediate points as may be designated by the Secretary, the available water to which the Yuma Project (situated entirely within the United States and not exceeding in area 120,000 acres plus lands lying between the project levees and the Colorado River as such levees were located in 1931) is entitled, not exceeding two thousand (2,000) second-feet of water in the aggregate, or such part thereof as the Secretary may direct, for the use and benefit of said project, including the development of power at Syphon Drop, such water to be diverted, transported and delivered continuously in so far as reasonable diligence will permit; provided, however, that water shall not be diverted, transported or delivered for the Yuma Project when the Secretary notifies Imperial Irrigation District that said project for any reason may not be entitled thereto; provided, further, that there may be diverted, transported and delivered such water in excess of requirements for irrigation or potable purposes, as determined by the Secretary, on the Yuma Project as so limited, only when such water is not required by the District for irrigation or potable purposes. The diversion, transportation and delivery of water for the Yuma Project as aforesaid shall be without expense to the United States or its successors in control of said project, as to capital investment required to provide facilities for such diversion and transportation of water except such checks, turnouts and other structures required for delivery from said canal.

Contract of October 23, 1918

Article 16. That certain contract between the United States of America and Imperial Irrigation District, bearing date of October 23, 1918, providing for a connection with Laguna Dam, having been terminated, except as to the provisions of Article nine (9) thereof, by said Imperial Contract, the District hereby consents to such partial termination of said first mentioned contract. The District hereby consents that there be furnished to the United States or its successors in interest in the control, operation and maintenance of the Yuma Project, from any power development on the All-American Canal at or near Pilot Knob, up to but not to exceed four thousand horsepower of electrical energy for use by the agency in charge of project operations for irrigation and drainage pumping purposes and necessary incidental use on said Yuma Project, such power to be furnished at cost (including overhead and general expense) plus ten per cent; provided, however, that such power at or near Pilot Knob shall not be required to be furnished except at such times as all power feasible of development at Syphon Drop or developed elsewhere within a radius of 40 miles from the City of Yuma for the benefit of the Yuma Project is being used for project operations as in this article specified.

Delivery of Water by United States

Article 17. The United States shall, from storage available in the reservoir created by Boulder Dam, deliver to or for the District, for the benefit of the lands under or that will be served from the All-American Canal in Coachella Valley, now or hereafter within the District and lying within the Coachella Service Area, hereinafter defined, each year, at a point in the Colorado River im-

mediately above Imperial Dam, so much water as may be necessary to supply the District a total quantity, including all other waters diverted for use within the District from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, as follows: (Subject to availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act):

> The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:
>
> Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands.
>
> Section 2. A second priority to Yuma Project of the United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.
>
> Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adja-

cent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre-feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

Section 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum.

Section 5. A fifth priority (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water

per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation.

Section 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of reduced diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

Section 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir ac-

cumulated to the individual credit of said City and/or said County (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulations, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said City and/or said County and such users resulting therefrom.

Section 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said District and said City, and either or both may use said apportionments as may be agreed by and between said District and said City.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

Section 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the District agrees that he may, contract with any of the allottees above named in accordance with the above stated recommendation, or, in the event that such recommendation as to Palo Verde Irrigation District is superseded by an agreement between all the above allottees or by a final judicial determination, to contract with the Palo Verde Irrigation District in accordance with such agreement or determination; Provided, that priorities numbered fourth and fifth shall not thereby be disturbed.

The use of water by the District shall be in conformity to the following provisions of that certain agreement executed between the District and Imperial Irrigation District dated February 14th, 1934, hereinabove in Article 4 (c) referred to, to-wit:

> "Imperial Irrigation District shall have the prior right for irrigation and potable purposes only, and exclusively for use in the Imperial Service Area, as hereinafter defined or hereunder modified, to all waters apportioned to said Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys as provided in the third and sixth priorities set out in the recommendation of the Chief of the Division of Water Resources of the State of California, as contained in Article 17 of the Imperial Contract. Subject to said prior right of Imperial Irrigation District, Coachella Valley County Water District shall have the next right, for irrigation and potable purposes only and exclusively for use in the Coachella Service Area, as hereinafter defined or hereunder modified, to all waters so apportioned to said Imperial Irrigation District and other lands under or that will

be served from the All-American Canal in the Imperial and Coachella Valleys, as provided in said third and sixth priorities. The use of water for generation of electric energy shall be, in all respects, secondary and subservient to all requirements of said two districts for irrigation and potable purposes as above limited.

As hereinabove used, the term 'Imperial Service Area' shall comprise all lands within the boundaries of Imperial Irrigation District as said District was constituted on June 23, 1931, and all lands in Imperial and San Diego Counties, California, shown on Map marked Exhibit 'A', attached to said Imperial Contract, and included within hatched border lines indicated on said map by legend as 'Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District', other than (a) such of said lands as are labeled 'Dos Palmas Area' and (b) such of said lands as lie West of Salton Sea and North of the Northerly boundary line of Township 11, South of the San Bernardino Base Line. The term 'Coachella Service Area' shall comprise all lands described on statements hereto attached and marked Exhibits 'B', 'C', 'D' and 'E', respectively,"

(Said Exhibits "B", "C", "D" and "E" being identical with Exhibits "B", "C", "D" and "E" attached to this contract between the District and the United States),

"being approximately, but not exactly, the lands within said hatched border lines shown on said Exhibit 'A', other than those included in said Imperial Service Area. Upon application of either District and with the written consent of the Secretary of the Interior, the boundaries of the service area which

such district is entitled hereunder to serve may at any time or from time to time be changed, but may not be so changed as, in the aggregate, to add more than 5000 acres to, nor to subtract more than 5000 acres from such service area, as herein defined, without the written consent of the district entitled hereunder to serve the other service area."

As far as reasonable diligence will permit said water shall be delivered as ordered by the District, and as reasonably required for potable and irrigation purposes within said Coachella Service Area. This contract is for permanent water service but is subject to the condition that Boulder Dam and Boulder Canyon Reservoir shall be used; First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the District and the United States shall observe and be subject to, and controlled by said Colorado River Compact, in the construction, management and operation of Boulder Dam, Imperial Dam, All-American Canal, and other works and the storage, diversion, delivery and use of water for the generation of power, irrigation, and other purposes. The United States reserves the right to temporarily discontinue or reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacements or installation of equipment and/or machinery at Boulder Dam, but as far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and

employees shall not be liable for damages when, for any reason whatsoever, suspension or reductions in delivery of water occur. This contract is without prejudice to any other or additional rights which the District may now have not inconsistent with the foregoing provisions of this article, or may hereafter acquire in or to the waters of the Colorado River. Subject to the provisions of Article fourteen (14) hereof, nothing in this contract shall be construed to prevent the diversion by or for the District of water to the full capacity herein provided for it in the All-American Canal if and when water over and above the quantity apportioned to it hereunder is available, and no power development at Imperial and/or Laguna Dam shall be permitted to interfere with such diversion by or for said District, but, except as provided in Article Twenty-one (21) hereof, water shall not be diverted, transported nor carried by or through Imperial Dam or All-American Canal for any agency other than the District or Imperial Irrigation District, except by written consent of the Secretary.

Measurement of Water

Article 18. The water which the District receives under the apportionment as provided in Article seventeen (17) hereof shall be measured at such point or points on the canal as may be designated by the Secretary. Measuring and controlling devices shall be furnished and installed by the United States as a part of the work provided for herein, but shall be operated and maintained by and at the expense of the district, or districts, operating the works. They shall be and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights-of-way of the District.

Record of Water Diverted

Article 19. The District shall make full and complete written reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River, and delivered to the District, and the disposition thereof. The records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

Refusal of Water in Case of Default

Article 20. The United States reserves the right to refuse to deliver water to the District in the event of default for a period of more than twelve (12) months in any payment due the United States under this contract, or in the discretion of the Secretary, to reduce deliveries in such proportion as the amount in default by the District bears to the total amount due. It is understood, however, that the provisions of this article shall not relieve the District of its obligation hereunder to divert, transport and deliver water for the use and benefit of other agencies with whom the United States may contract for the diversion, transportation and delivery of water through or by the works to be constructed under the terms hereof. The United States further reserves the right to forthwith assume control of all or any part of the works to be constructed hereunder and to care for, operate and maintain the same, so long as the Secretary deems necessary or advisable, if, in his opinion, which shall be final and binding upon the parties hereto, the District does not carry out the terms and conditions of this contract to their full extent and meaning. In such event, the District's pro rata share of the actual cost of such care, operation and maintenance by the United

States shall be repaid to the United States, plus fifteen per centum (15%) to cover overhead and general expense, on March first of each year immediately succeeding the calendar year during which said works are operated and maintained by the United States. Nothing herein contained shall relieve the District of the obligation to pay in any event all installments and penalties provided in this contract.

Use of Works by the United States and Others

Article 21. The United States also reserves the right to, and the District agrees that it may, at any time prior to the transfer of constructed works to the District or Imperial Irrigation District for operation and maintenance, increase the capacity of such works and contract for such increased capacity with other agencies for the delivery of water for use in the United States. Such other agencies shall have the privilege at any time of utilizing by contract or otherwise, such power possibilities as may exist upon said canal in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. In the event other agencies thus contract with the United States, each of such agencies shall assume such proportion of the total cost of said works to be used jointly by such agency and the District, including Laguna Dam, as the Secretary may determine to be equitable and just but not less than the proportion that the capacity provided for such agency in such works bears to the total capacity thereof (except in that part thereof above Syphon Drop including Laguna Dam, in which part the proportion which such other agency shall assume shall be not less than the proportion

that the capacity provided for such agency therein bears to the total capacity thereof less the capacity to be provided without cost to and for the Yuma Project) and the District's financial obligations under this contract shall be adjusted accordingly. In no event shall construction costs chargeable to the District be increased by reason of additional capacity being provided for any such agency or agencies or contract or contracts having been made with same. Any such agency thus contracting shall also be required to reimburse the District in such amounts and at such times as the Secretary may determine to be equitable and just for payments theretofore made by the District for the right to use Laguna Dam.

Title to Remain in the United States

Article 22. Title to the aforesaid Imperial Dam and All-American Canal shall be and remain in the United States notwithstanding transfer of the care, operation and maintenance thereof to said two districts, or either of them; provided, however, that the Secretary may, in his discretion, when repayment to the United States of all moneys advanced shall have been made, transfer the title to said main canal and appurtenant structures except the diversion dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him.

Rules and Regulations

Article 23. There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract governing the diversion and

delivery of water hereunder to or for the District and to other contractors. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the District and opportunity for it to be heard, as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof, or to protect the interests of the United States. The District hereby agrees that in the operation and maintenance of the Imperial Dam and All-American Canal, all such rules and regulations will be fully adhered to by it.

Inspection by the United States

Article 24. The Secretary may cause to be made from time to time a reasonable inspection of the works constructed by the United States to the end that he may ascertain whether the terms of this contract are being satisfactorily executed by the District. Such proportion of the actual expense of such inspection in any calendar year, as shall be found by the Secretary to be equitable and just, shall be paid by the District to the United States on March first of each year immediately following the year in which such inspection is made, and upon statement to be furnished by the Secretary. The Secretary or his representative shall at all times have the right of ingress to and egress from all works of the District for the purpose of inspection, repairs and maintenance of works of the United States, and for all other purposes.

Access to Books and Records

Article 25. The officials or designated representatives of the District shall have full and free access to the books and records of the United States, so far as they relate to the matters covered by this contract, with the right

at any time during office hours to make copies of and from the same; and the Secretary shall have the same right in respect of the books and records of the District.

Disputes or Disagreements

Article 26. Disputes or disagreements as to the interpretation or performance of the provisions of this contract, except as otherwise provided herein, shall be determined either by arbitration or court proceedings, the Secretary being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within thirty (30) days after their first meeting, such arbitrators not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Interest and Penalties

Article 27. No interest shall be charged on any installments of charges due from the District hereunder except that on all such installments or any part thereof, which may remain unpaid by the District to the United States after the same become due, there shall be added to the amount unpaid a penalty of one-half of one per centum (½%) and a like penalty of one-half of one per centum (½%) of the amount unpaid shall be added on the first day of each month thereafter so long as such default shall continue.

Agreement Subject to Colorado River Compact

Article 28. This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved by the Boulder Canyon Project Act.

Application of Reclamation Law

Article 29. Except as provided by the Boulder Canyon Project Act, the reclamation law shall govern the construction, operation and maintenance of the works to be constructed hereunder.

Contract to be Authorized by Election and Confirmed by Court

Article 30. The execution of this contract by the District shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to judgment proceedings in court for a judicial confirmation of the authorization and validity of this contract. The United States shall not be in any manner bound under the terms and conditions of this contract unless and until a confirmatory final judgment in such proceedings shall have been rendered, including final decision, or pending

appellate action if ground for appeal be laid. The District shall without delay and at its own cost and expense furnish the United States for its files, copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith, which said copies shall be properly certified by the Clerk of the Court in which confirmatory judgment is obtained.

Method of Determining Net Power Proceeds

Article 31. In determining the net proceeds for each calendar year from any power development which the district is hereunder authorized to make, on the All-American Canal, to be paid into the Colorado River Dam fund as provided in Article fourteen (14) hereof, there shall be taken into consideration all items of cost of production of power, including but not necessarily limited to amortization of and interest on capital investment in power development, replacements, improvements, and operation and maintenance, if any. Any other proper factor of cost not here expressly enumerated may be taken into account in determining the net proceeds.

Contingent upon Appropriations

Article 32. This contract is subject to appropriations or allocations being made by Congress or other Governmental financing authority from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient

moneys in the Colorado River Dam fund to permit of said allotments. If more than three years elapse after this contract becomes effective and before appropriations or allocations are available to permit the United States to make expenditures hereunder, the District may, at its option, upon giving sixty (60) days written notice to the Secretary, cancel this contract. Such option shall be expressed by vote of the electors of the District with the same formalities as required for the authorization of contracts with the United States.

Addition of Lands to District

Article 33. (a) The District agrees to change its boundaries, subject to presentation to its Board of Directors before January 1, 1940, of lawful and sufficient petition or petitions therefor and the approval of the electors, so as to add to the District and to its Improvement District No. 1 all lands lying within the Salton Area, referred to in Article 10 (d) hereof.

(b) Whenever any of said lands within the Coachella Service Area are added to the District, the Secretary, on behalf of the United States, hereby consents to such addition. Nothing contained in this contract shall impair any right or remedy of any person entitled to object or protest against the addition to the District of any particular tract or tracts of land, nor impair the power of the Board to hear and determine any such objections or protests.

(c) Nothwithstanding anything herein contained, the District may, at its option, change its boundaries so as to add to the District all or any part of the Dos Palmas Area, and/or of the Fish Springs Area, referred to in Article 10 (d) hereof. In the event any lands within

said Dos Palmas Area or Fish Springs Area shall be added to the District such addition shall be made upon conditions substantially as hereinafter contained and as and when authorized by law, and the Secretary on behalf of the United States hereby requires and consents to such conditions, to-wit:

CONDITION No. 1

Contribution to Capital Costs

The lands within each Improvement District shall collectively bear that proportion of all costs of the Imperial Dam, and All-American Canal, including Laguna Dam, herein agreed to be borne by the District, which the area within such Improvement District bears to the total area of the Coachella Service Area from time to time within the District.

CONDITION No. 2

Contribution to Costs Paid by District

Each Improvement District, other than Improvement District No. 1 shall bear, in the proportion set out in Condition No. 1, its share of all capital costs of the Imperial Dam and All-American Canal, including Laguna Dam, paid by the District prior to the first District tax collection from the lands within such Improvement District and shall pay such share to the District in such installments and at such times as shall be determined by resolution of the Board of Directors of the District to be just and equitable. Upon collection of said sums by the District, the portions of the Coachella Service Area by which said sums were originally paid shall thereupon be entitled to reimbursement or credit in such manner as may be determined by said Board.

CONDITION NO. 3

Distribution System

Each Improvement District shall bear the entire capital cost of any distribution system which may be constructed by or under the authority of the District to serve the lands within such Improvement District but shall not be required to bear any part of the capital cost of any distribution system to serve the lands within any other Improvement District.

CONDITION NO. 4

Taxation

All charges hereunder to be borne by each Improvement District unless otherwise collected from the lands therein, shall be a part of but in addition to the annual taxes upon said lands for other District purposes and shall constitute an additional annual charge upon said lands, to be levied upon an ad valorem or other basis as now or hereafter provided by law.

Rights Reserved Under Section 3737 Revised Statutes

Article 34. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract not Exclusive

Article 35. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States, the District or Imperial Irrigation District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The

waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Interest in Contract Not Transferable

Article 36. No interest in this contract is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Member of Congress Clause

Article 37. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

Contract Void If Certain Lands Included in Imperial Irrigation District

Article 38. In the event lawful petition or petitions sufficient in all respects for inclusion within Imperial Irrigation District of ninety per centum (90%) of the lands shown on said Exhibit "A" lying North of the Northerly boundary line of Township Eleven (11), South of the San Bernardino Base Line and bounded by the lines indicated on said Exhibit "A" as "Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District", exclusive of the Dos Palmas area and exclusive of Indian lands and public lands of the United States shall be filed pursuant to and within the time limited by said Imperial Contract, and said lands shall be thereafter included within said Imperial Irrigation

District pursuant to such petition or petitions, then, as of the date of such inclusion, this contract shall terminate and be at an end.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA
By HAROLD L. ICKES
Federal Emergency Administrator of Public Works and Secretary of the Interior.

COACHELLA VALLEY COUNTY WATER DISTRICT
By HARRY W. FOSTER
President.

Attest:

THELMA SCHISLER
Secretary.

(The following exhibits, annexed to the foregoing contract, are omitted here because of limitations of space:

Exhibit A: "Bureau of Reclamation map No. 212-D-112, dated at Denver, Colorado, June 23, 1931, and entitled 'Boulder Canyon Project—All-American Canal System'."

Exhibit B: "Description of lands within Coachella Valley County Water District and its improvement district No. 1 and within the Coachella service area."

Exhibit C: "Description of lands outside Coachella Valley County Water District and within the Coachella service area, designated the Salton Area."

Exhibit D: "Description of lands outside Coachella Valley County Water District and within the Coachella service area, designated the Dos Palmas area."

Exhibit E: "Description of lands outside Coachella Valley County Water District and within the Coachella service area, designated the Fish Springs area.")

APPENDIX NO. 17

WATER DISTRIBUTION CONTRACT: UNITED STATES AND COACHELLA VALLEY COUNTY WATER DISTRICT

December 22, 1947

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOULDER CANYON PROJECT
ALL-AMERICAN CANAL
COACHELLA VALLEY COUNTY WATER DISTRICT

Contract for Construction of Distribution System, Protective Works, and Drainage Works

1. **This Contract,** made this 22nd day of December, 1947, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, the Act of Congress approved May 10, 1939 (53 Stat. 635, 718), designated the Interior Department Appropriation Act, 1940, the Act of Congress approved August 4, 1939 (53 Stat. 1187), designated the Reclamation Project Act of 1939, and the Act of Congress approved June 26, 1947 (Public Law 121, 80th Cong., 1st Session), between **The United States of America,** hereinafter referred to as the "United States", acting for this purpose by ~~J. A. Krug,~~ William E. Warne, Assistant Secretary of the Interior, hereinafter referred to as the "Secretary", and **Coachella Valley County Water District,** a County Water District

created, organized and existing under and by virtue of the County Water District Act of the State of California, and acts amendatory thereof or supplementary thereto, with its principal place of business at Coachella, Riverside County, California, hereinafter referred to as the "District".

Witnesseth That:

Explanatory Recitals

2. **Whereas,** pursuant to the provisions of the Reclamation Law and particularly pursuant to the provisions of the Boulder Canyon Project Act, the United States and the District have heretofore entered into a contract of date October 15, 1934 (Symbol and No. I1r-781), entitled "Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water"; and

3. **Whereas,** in addition to the works which the United States agreed to construct for the use and benefit of the District, as provided by the aforesaid contract of October 15, 1934, which said works, or portions thereof, are now completed or in course of construction, the District has requested that the United States also construct for use in connection therewith and in addition thereto (a) a distribution system for the benefit of the District and those lands that will be served with water from the All-American Canal in Coachella Valley, now or hereafter within the District and lying within the Coachella Service Area defined in Article 17 of said contract of October 15, 1934; (b) an appurtenant system of protective works for the protection of said distribution system, the Main (All-American) Canal to Coachella Valley, and lands and other properties below the Canal from overflow or other damage by storm

waters or surface waters from above the Canal; and (c) has also requested the United States to participate in the conduct of field investigations and analyses of data incidental to the preparation by the District of designs for the construction by the District of such drainage works as may hereafter be required for lands now or hereafter within the District and the Coachella Service Area; and

4. **Whereas,** the United States is willing to undertake the construction of the aforementioned distribution system and the appurtenant system of protective works and is willing to participate in investigations and studies preliminary to the construction by the District of said drainage works, all under the conditions hereinafter set forth; and

5. **Whereas,** the estimated total cost of said distribution system, appurtenant system of protective works and drainage investigations and studies is Eighteen Million Dollars ($18,000,000), of which cost the Secretary has heretofore allocated to the purpose of flood control the sum of Four Million Five Hundred Thousand Dollars ($4,500,000), said last mentioned sum to be non-repayable and non-returnable to the United States; and

6. **Whereas,** the Secretary has determined, and does hereby determine, that the revenues provided for by this contract are adequate in his judgment to insure payment of all repayable and returnable expenses of construction, operation and maintenance of the works to be constructed by the United States under the terms hereof, as well as other work to be performed by the United States hereunder, in the manner provided in the Reclamation Law; and

7. **Whereas,** the District will, at its own expense, construct such drainage works as may hereafter be required

for the lands now or hereafter within the District and lying within the said Coachella Service Area;

Now, Therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Modification of Contract Dated October 15, 1934

8. (a) As one of the considerations for the execution of this contract by the United States it is agreed that the Main (All-American) Canal to Coachella Valley (hereinafter styled "Coachella Main Canal"), shall terminate at Engineer Station 6517, a point near 57th Ave., as shown on Exhibit "A" attached hereto and by this reference made a part hereof, instead of at the boundary line common to Riverside and Imperial Counties, as shown on Exhibit "A" attached to the aforesaid contract dated October 15, 1934. As so shortened, said Coachella Main Canal shall be constructed in the approximate location shown on Exhibit "A", hereto attached, with such capacities as the Secretary may conclusively determine to be necessary or advisable upon engineering or economic considerations to accomplish the ends contemplated by the aforesaid contract of October 15, 1934, as amended by this contract; provided, however, that such changes in capacities, locations, lengths and alignments may be made during the progress of the work as may, in the opinion of the Secretary, whose opinion shall be final and binding upon the parties hereto, be expedient, economical, necessary or advisable.

(b) Notwithstanding any of the terms or provisions of the aforesaid contract dated October 15, 1934, all work agreed to be performed by the United States thereunder shall be deemed to be completed upon whichever of the following described dates shall first occur:

(1) The date of expiration of five years from and after the date of acceptance by the United States of the work called for by its contract with Otto B. Ashbach and Sons, dated January 10, 1947 (Symbol and Number I2r-17147), for construction of earthwork, concrete canal lining and structures between Engineer Stations 6106+06 and 6517+00 on the Coachella Main Canal, or

(2) The date of completion of the distribution system hereinafter described in Article 9(a)(i) of this contract, as determined by the Secretary, whose determination thereof shall be final and binding upon the parties hereto.

(c) Following receipt by the District of notice of completion of all work provided for by the aforesaid contract dated October 15, 1934, as determined under the provisions of this contract, payment for such work shall be due and payable from the District to the United States in accordance with the terms of said contract dated October 15, 1934.

Construction by the United States and the District

9. (a) In addition to the construction of the works agreed to be constructed by the United States for the use and benefit of the District under the provisions of the aforesaid contract of date October 15, 1934, as amended by Article 8 of this contract, the United States will also, subject to the provisions of Articles 12 and 32 hereof, construct for use in connection therewith:

(i) A distribution system at the approximate locations indicated on the map marked Exhibit "A", attached hereto and by this reference made a part hereof. Said distribution system shall consist generally

of open, concrete-lined or asphaltic-lined canals and concrete pipe laid underground, with capacities as indicated in said Exhibit "A", pumping plants as indicated in said Exhibit and such other appurtenant and auxiliary structures as the Secretary may conclusively determine to be necessary or advisable upon engineering or economic considerations to accomplish the ends contemplated by such distribution system; provided, however, that changes in capacities, locations, lengths and alignments of said distribution system works may be made during the progress of the work and after consultation with the District, as may in the opinion of the Secretary, whose opinion thereof shall be final and binding upon the parties hereto, be expedient, economical, necessary or advisable; and

(ii) A system of protective works designed to protect the Coachella Main Canal, the distribution system herein provided for and lands and other properties below the Canal from overflow or other damage by storm waters or surface waters. Said protective works shall consist of, but need not be limited to, such dams, dikes, levees, embankments, catchment basins, bridges, causeways, roads, culverts, flumes, syphons, waterways, evacuation and dispersion channels, and other works, as indicated in said Exhibit "A", as the Secretary may conclusively determine to be necessary or advisable upon engineering or economic considerations to accomplish the ends contemplated by such system of protective works; provided, that changes in capacities, locations, lengths and alignments of said protective works or structures may be made during the progress of the work and after consultation with the District, as may in the opinion of

the Secretary, whose opinion thereof shall be final and binding upon the parties hereto, be expedient, economical, necessary or advisable.

(b) The District hereby agrees to construct such drainage works as may be necessary for the drainage of lands now or hereafter within the District and the Coachella Service Area. To the extent that the Secretary may conclusively determine to be necessary or advisable, the United States shall participate in the conduct of field investigations and analyses of data incidental to the preparation, by the District, of designs for the construction by the District of such drainage works. Construction plans and specifications prepared by the District for the construction from time to time of units of said drainage works shall be subject to the concurrence of the United States; provided, however, that the cost to the District of such participation by the United States shall in no event exceed the sum of One Hundred Fifty Thousand Dollars ($150,000).

(c) The ultimate cost to the District of the work herein agreed to be performed by the United States shall in no event exceed the aggregate sum of Thirteen Million Five Hundred Thousand Dollars ($13,500,000). Such cost shall include all expenses of whatsoever kind or nature heretofore or hereafter incurred by the United States from the Reclamation Fund, the Colorado River Dam Fund, or otherwise, in connection with, growing out of or resulting from the work herein agreed to be performed by the United States, including, but not limited to, the cost of labor, materials, equipment, engineering, legal work, superintendence, administration, overhead, any and all costs arising from operation and maintenance of works to be constructed by the United States under the terms hereof prior to the time said operation and maintenance costs are assumed

by the District, damage of all kinds and character, and the costs of rights-of-way and destroyed improvements, as hereinafter provided.

(d) The United States will invoke all legal and valid reservations of rights-of-way under Acts of Congress, or otherwise reserved or held by it, without cost to the District, except that the United States reserves the right, where rights-of-way are thus acquired, to reimburse the owners of the servient lands for the value of improvements which may be destroyed, and the District agrees that the United States may include such disbursements in the cost of work performed by the United States hereunder, as provided in subdivision (c) of this Article.

(e) The District shall convey to the United States, without cost, unencumbered fee simple title to any and all lands owned by it which, in the opinion of the Secretary, may be required for right-of-way purposes for the works constructed by the United States hereunder.

(f) Where rights-of-way are required for those works described in subdivision (a) (i) of this Article, and such rights-of-way are not reserved to the United States under Acts of Congress or otherwise, or the lands over which such rights-of-way are required are not then owned by the District, the District shall, upon request of the Secretary, acquire title to such lands or perpetual easements therein, required for such purpose, and in turn convey unencumbered fee simple title thereto or perpetual easements therein to the United States, at the actual cost thereof to the District, including the actual cost of legal and title expenses incurred by the District, subject to the approval of such costs by the Secretary. In case of neglect or failure of the District, upon request of the Secretary, so to acquire and convey any lands or perpetual easements de-

termined by him to be necessary for the construction of such works, the United States may acquire the same and charge the actual cost thereof, including the actual cost of legal and title expenses incurred by the United States, to the District. All sums reimbursed to the District by the United States under the provisions of this subdivision of this Article shall be included in the cost of work performed by the United States hereunder, as provided in subdivision (c) of this Article.

(g) Where rights-of-way are required for those works described in subdivision (a) (ii) of this Article, and the lands over which such rights-of-way are required are not then owned by the United States or by the District, the District shall, upon request of the Secretary, acquire title to such lands or perpetual easements therein, required for such purpose, and in turn convey unencumbered fee simple title thereto or perpetual easements therein, without cost, to the United States. In case of neglect or failure of the District, upon request of the Secretary, so to require and convey any lands or perpetual easements determined by him to be necessary for the construction of those works described in subdivision (a) (ii) of this Article, the United States may acquire the same and charge the actual cost thereof, including the actual cost of legal and title expenses incurred by the United States, to the District. On or before October 1 of each calendar year, the United States will give written notice to the District of the amount expended by the United States under the provisions of this subdivision of this Article during the twelve-month period ending on September 1 next preceding, and such amount shall be repaid to the United States by the District on March 1 next following.

Operation and Maintenance of Constructed Works

10. (a) The District shall assume the care, operation and maintenance of the works herein agreed to be constructed by the United States, or any major part thereof completed and ready for use, as determined by the Secretary, whose determination thereof shall be final and binding upon the parties hereto, upon sixty (60) days' written request therefor made by the Secretary at any time subsequent to the completion of construction of said works or any such major part thereof. Thereafter, except as herein otherwise provided, the District shall, at its own cost and without expense to the United States, care for and operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the diversion, transportation and distribution of water, and for the protection of the Coachella Main Canal, the distribution system herein provided for and lands and other properties below the main canal from overflow or other damage by storm waters, or surface waters, as when received from the United States, reasonable wear and damage by the elements excepted, and shall use all practicable methods to insure the economical and beneficial use of water. After the care, operation and maintenance of any such works shall have been assumed by the District, the District shall save the United States, its officers, agents, attorneys and employees, harmless as to any and all injury and damage to persons and property which may arise out of the care, operation and maintenance thereof.

(b) During the repayment period of this contract, if, in the opinion of the Secretary, whose opinion shall be final and binding upon the parties hereto, the District, at any time, shall have failed to perform substantially

any provision of this contract, the United States may, on sixty (60) days' written notice to the District, resume the control of any such works and thereafter care for, operate and maintain the same. In such event the District shall advance to the United States within fifteen (15) days after written demand by the Secretary, the estimated cost of such care, operation and maintenance by the United States, plus fifteen per centum (15%) to cover overhead and general expense, during the period commencing with the date that the care, operation and maintenance of such works is assumed by the United States and terminating on the first day of March next succeeding. During such time thereafter as the United States shall retain the operation and maintenance of such works, the District shall advance to the United States on March first of each year, upon estimates therefor to be furnished by the United States on or before September first next preceding, the estimated cost of operation and maintenance, plus fifteen per centum (15%) to cover overhead and general expense, for the following twelve (12) months. If the amount advanced by the District for any period shall prove to be insufficient to pay the cost of operation and maintenance by the United States during such period, the amount of such deficiency shall be paid forthwith by the District to the United States upon notice thereof and demand therefor by the Secretary. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any period shall be credited on the estimated cost of operation and maintenance by the United States during the succeeding period. Any surplus of any advances made by the District for operation and maintenance which shall remain unexpended and un-

obligated for such purpose by the United States at such time as the care, operation and maintenance of the works are returned to the District shall be refunded to the District. Nothing herein contained shall relieve the District of the obligation to pay, in any event, all installments and interest provided in this contract.

(c) Whenever the United States shall have resumed the care, operation and maintenance of any such works pursuant to the provisions of subdivision (b) of this Article, the Secretary, upon written request by the District accompanied by assurances satisfactory to him, may, upon sixty (60) days' written notice to the District, return the care, operation and maintenance of any such works to the District.

(d) The right of the United States to control the care, operation and maintenance of any such works, pursuant to the provisions of this Article, shall continue during the repayment period of this contract.

Keeping Works and Appurtenant Structures in Repair

11. During the repayment period of this contract, except in case of emergency, no substantial change in any of the works to be constructed by the United States and transferred to the District under the provisions hereof shall be made by the District without first having had and obtained the written consent of the Secretary, and the Secretary's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto. The District shall promptly make any and all repairs to, and replacements of, all works transferred to it under the terms and conditions hereof which, in the opinion of the Secretary, are deemed necessary for the proper operation and mainte-

nance of such works. In case of neglect or failure of the District to make such repairs, the United States may, at the option of the Secretary, after reasonable notice to the District, cause such repairs to be made and charge the actual cost thereof, plus fifteen per centum (15%) to cover overhead and general expense, to the District. On or before October 1 of each calendar year the United States shall give written notice to the District of the amount expended by the United States for repairs under this Article during the twelve-month period ending on September 1 immediately preceding. Such cost, plus overhead and general expense as stated above, shall be repaid by the District on March 1 immediately succeeding.

Agreement by District to Pay for Work Performed by the United States

12. (a) The District agrees to pay the United States the actual cost, not exceeding Thirteen Million Five Hundred Thousand Dollars ($13,500,000), incurred by the United States on account of work herein agreed to be performed by the United States. In addition, the District hereby agrees to repay to the United States all expenditures incurred on account of any and all damages due to the existence, operation and maintenance of the works herein agreed to be constructed by the United States, the incurrence of which increases expenditures by the United States beyond the sum of Thirteen Million Five Hundred Thousand Dollars ($13,500,000). The total of all such costs and expenditures described in Article 9 and in this subdivision 12 (a) shall constitute, is hereby designated and is hereinafter referred to as "the general repayment obligation of the District".

irrigation block shall be that amount which bears the same ratio to the general repayment obligation of the District that the irrigable acreage in such irrigation block bears to the total irrigable acreage of the District, all as determined by the Secretary, whose determination thereof shall be conclusive and binding upon the parties hereto. If necessary, the obligation as to each block may be determined originally on the basis of estimates as to (i) the net irrigable acreage in the District as a whole, (ii) the net irrigable acreage in each block and (iii) the ultimate amount of the general repayment obligation of the District, and the obligation so determined shall be controlling until the obligation is finally determined on the basis of the actual net irrigable acreage in the District as a whole, the actual net irrigable acreage in each block and the actual amount of the general repayment obligation of the District. If the total obligation for any block, as finally determined, is different from the original allocation therefor, the remaining unaccrued balance of the original obligation shall be adjusted by the amount of the difference. The Secretary promptly shall notify the District in writing of the amounts when originally and when finally determined as the obligation as to each irrigation block.

(c) The general repayment obligation of the District as determined pursuant to Articles 9 and 12 (a) hereof shall remain a general obligation of the District as a whole notwithstanding the allocation thereof among two or more irrigation blocks in the District, and default of the lands in any block as to the obligation allocated to that block shall not relieve the District as a whole of liability as to that portion of its general repayment obligation. All lands now or hereafter in the District are, as a whole,

obligated to pay to the United States the full amounts herein agreed upon, regardless of the default or failure of any tract or of any landowner in the payment of the taxes levied by the District against such tract or landowner, and the District shall, when necessary, levy and collect appropriate taxes to make up for the default or delinquency of any such tract of land or of any such landowner in the payment of taxes, so that in any event and regardless of any defaults or delinquencies in the payment of any tax or taxes, the amounts becoming due the United States hereunder shall be paid to the United States by the District when due. Nothing in this subdivision of this Article, however, shall be construed as in any manner altering the time or rate of payment of the obligation allocated to each irrigation block.

Development Periods and Furnishing of Water During Such Periods

14. For each irrigation block which shall be designated as provided in Article 13 hereof there is hereby fixed a development period of eight (8) years from and including the date on which water from the works described in Article 9 (a) (i) hereof is available for all irrigable lands in the block, as determined by the Secretary. During the development period for each irrigation block the District shall deliver water to the lands within such block on a water rental or toll-charge basis. The charge shall be on the basis of an amount per acre foot of water per annum. The charges for each irrigation block shall be fixed by the District with the object of collecting throughout the development period amounts at least sufficient (i) to defray the annual costs of operation and maintenance chargeable to that block, and (ii) to provide for repairs

(b) Should Congress or other Governmental financing authorities fail to make necessary appropriations or allocations of money to complete the work herein provided for, then the Secretary may, at such reasonable time as he may consider advisable after Congress and such other Governmental financing authorities shall have failed for two (2) consecutive years to make the necessary appropriations or allocations which shall have been annually requested by the Secretary, give the District notice of the termination of work by the United States, and furnish the District with a statement of the amount actually expended by the United States thereon, exclusive of the amounts theretofore covered by notices given under Article 15 of this contract, and the amount set out in such statement shall be paid by the District in the manner set out in Article 15 of this contract.

Establishment of Irrigation Blocks; Allocation of Construction Costs Obligations Thereto

13. (a) The Secretary shall, from time to time, during the construction of works hereunder, designate the areas of land within the District to which irrigation water will be available through the works described in Article 9 (a) (i) hereof at substantially the same time. Each such area shall be known as an irrigation block. No irrigation block so designated shall include land in more than one improvement district of the District. The designation of each irrigation block shall be made before water becomes available therefor through the works described in Article 9 (a) (i) hereof.

(b) The Secretary shall make an allocation of the District's general repayment obligation to the lands in the respective irrigation blocks. The obligation of each

to and depreciation of works constructed by the United States and operated by the District hereunder, in accordance with the provisions of Article 10. The amount of the charge and the terms and conditions with respect to it for each year during the development period shall be determined and announced by the District on or before January 1 of each year. The District shall collect the necessary tolls and charges from the water users within each irrigation block during a development period in advance of the delivery of water.

Terms of Payment

15. The amount herein agreed to be paid to the United States on account of each irrigation block shall be due and payable by the District in not more than forty (40) annual instalments commencing with the calendar year, next succeeding the year of termination of the development period for such irrigation block. The first five (5) of such annual instalments shall each be one per centum (1%) of the cost allocated to each irrigation block, all as conclusively determined by the Secretary; the next ten (10) of such instalments shall each be two per centum (2%) of said cost, and the remainder of such annual instalments shall each be three per centum (3%) of said cost. The sums payable annually as set forth above shall be divided into two (2) equal semiannual instalments payable on March 1st and September 1st of each year; provided, however, that if the development period with respect to any irrigation block shall terminate subsequent to August 1st of any year, the first semiannual instalment of charges hereunder shall be due and payable on March 1st of the second succeeding year following termination of the development period for such irrigation block.

Accumulation and Use of Reserve Fund

16. (a) Beginning in the calendar year in which the first instalment of the general repayment obligation of the District shall have become due and payable under the provisions of Article 15 hereof and continuing thereafter until such time as all sums of money becoming due hereunder shall have been paid to the United States, the District shall accumulate and maintain, in the manner hereinafter provided, a reserve fund which shall be available for the purposes and in the circumstances hereinafter mentioned:

(b) Said reserve fund shall be accumulated by the District in yearly increments of Twenty Thousand Dollars ($20,000) until the reserve fund thus accumulated shall total One Hundred Thousand Dollars ($100,000), which total sum shall be maintained at all times, provided, however, that the District shall not be required to add to said reserve fund an amount in excess of Twenty Thousand Dollars ($20,000) in any one year.

(c) Except in case of emergency expenditures shall be made from said reserve fund only with the advance approval of the Secretary and only for the purposes of meeting major, unforeseen costs of operation and maintenance, repair, betterment and replacement of works constructed hereunder by the United States or the District.

(d) Said reserve fund shall be deposited and maintained, apart from other District funds, in a depository meeting the requirements of the laws of California and upon conditions concerning its withdrawal which are satisfactory to the Secretary.

(e) During such time or times as the operation and maintenance of works constructed hereunder shall have

been resumed by the United States in accordance with the provisions of Article 10 (b) hereof, said reserve fund shall be available for use by the United States for the same purposes as said reserve fund was theretofore available for use by the District.

Refusal of Water in Case of Default

17. The United States reserves the right to refuse to deliver water to the District under the provisions of the aforesaid contract of October 15, 1934, in the event of default for a period of more than twelve (12) months in any payment due the United States under this contract, or, in the discretion of the Secretary, to reduce deliveries in such proportion as the amount in default by the District bears to the total amount due. No water shall be delivered to or for any tract of land in the District during any time that the owners or holders thereof are delinquent in the payment of any taxes heretofore or hereafter levied by the District or any toll or other charges which the District may be authorized to make. It is understood, however, that the provisions of this Article shall not relieve the District of its obligation under the aforesaid contract of October 15, 1934, to divert, transport and deliver water for the use and benefit of other agencies with which the United States may contract for the diversion, transportation and delivery of water through or by the works constructed or to be constructed under the terms of the said contract of October 15, 1934.

Title to Remain in the United States.

18. Title to the works to be constructed by the United States under the terms hereof shall be and remain in the United States, notwithstanding transfer of the care, op-

eration and maintenance thereof to the District; provided, however, that the Secretary may, in his discretion, when repayment to the United States of all moneys advanced shall have been made, transfer the title to said works to the District.

Rules and Regulations

19. There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract governing the care, operation and maintenance of the works to be constructed hereunder. Such rules and regulations may be modified, revised and/or extended from time to time, after notice to the District and opportunity for it to present its views, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof. The District hereby agrees that in the care, operation and maintenance of the works to be constructed hereunder, all such rules and regulations will be fully adhered to.

Inspection by the United States

20. The Secretary may cause to be made from time to time a reasonable inspection of the works constructed by the United States to the end that he may ascertain whether the terms of this contract are being satisfactorily executed by the District. The actual expense of such inspection in any calendar year shall be paid by the District to the United States on March 1st of each year immediately following the year in which such inspection is made, and upon statement to be furnished by the Secretary. The Secretary or his representative shall at all times have the right of ingress to and egress from all works of the

District for the purpose of inspection, repairs and maintenance of works of the United States, and for all other purposes, within the terms of this contract.

Access to Books and Records

21. The officials or designated representatives of the District shall have full and free access to the books and records of the United States, as far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of or from the same; and the Secretary shall have the same right in respect of the books and records of the District.

Development and Compilation of Data and Keeping of Books, Records and Reports

22. (a) The District shall with reasonable accuracy maintain a modern set of books of account, in form acceptable to the Secretary, showing all the financial transactions of the District. On or before the first day of February of each year the District shall make full and complete written reports to the United States, on forms to be approved and furnished by the Secretary, covering all water delivered to the lands of the District through the works to be constructed hereunder, the disposition of such water, and the nature, extent and total estimated value of each kind of crop produced on the total acreage of the District during the twelve-month period ending December 31 next preceding. The District shall furnish such financial reports and statements of its operations and condition as may be required from time to time by the Secretary. The records and data from which any reports or statements are made shall be accessible to the United States on demand by the Secretary and the District

shall cooperate to the fullest extent in facilitating any investigation by the United States of the facts shown in such records or data.

(b) The District hereby declares its intention to cooperate with the United States in the development, preparation and compilation of such data, reports and statements as in the judgment of the Secretary are necessary or desirable, which operations may, at the request of the District, be performed by the United States at the expense of the District. The aggregate cost to the District during any calendar year of operations under this subdivision shall not exceed the sum of Fifteen Thousand Dollars ($15,000), unless a greater sum is authorized by the District. The actual cost to the United States of such operations in any calendar year shall be paid by the District to the United States on March 1st of each year immediately following the year in which such operations are conducted, and upon statement to be furnished by the Secretary.

Disputes or Disagreements

23. Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary being authorized to act for the United States in such arbitration proceedings. Whenever a controversy arises out of this contract and the parties hereto agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within thirty (30) days after their first meeting, such arbitrators

not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of a majority, with all five (5) arbitrators participating, shall be a valid and binding award of the arbitrators.

Interest on Charges Due from District

24. No interest shall be charged on any charges due from the District hereunder, except that on all such charges or any part thereof which remain unpaid by the District to the United States after the same become due, an interest charge of one-half of one percentum (½%) of the amount unpaid shall be added thereto, and thereafter an additional interest charge of one-half of one percentum (½%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest, is paid in full.

Contract Subject to Colorado River Compact

25. This contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact, approved by Section 13 (a) of the Boulder Canyon Project Act, and the parties hereto shall observe and be subject to and controlled by said Colorado River Compact in the construction, management and operation of all works provided for herein. It is understood and agreed by the parties hereto that this contract does not deal with the subject of availability of water.

Application of Reclamation Law

26. Except as provided in the Boulder Canyon Project Act, the Reclamation Law shall govern the construction,

operation and maintenance of the works to be constructed hereunder.

Lands Not to Receive Water Until Owners Thereof Execute Certain Contracts

27. No water shall be delivered to any excess lands, as defined in Article 29 hereof, unless the owners thereof shall have executed valid recordable contracts in form satisfactory to the Secretary, agreeing to the provisions of this contract between the United States and the District; agreeing to the appraisal provided for in Article 28 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Coachella Main Canal or the distribution system and system of protective works herein agreed to be constructed, all as hereinafter provided; and agreeing to the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, as hereinafter provided. No sale of any such lands shall carry the right to receive water delivered under said contract of October 15, 1934, unless and until the purchase price involved in such sale is approved by the Secretary and upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary may instruct the District by written notice to refuse to deliver any water to the land involved in such fraudulent sales and the District thereafter shall not deliver said water to such lands.

Valuation and Sale of Excess Lands

28. (a) The value of the irrigable lands within the District as defined in Article 29, held in private ownership of large landowners as defined in said Article, for the

purposes of this contract, shall be determined, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall be designated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, they shall so advise the Secretary and the District and the designation of the third appraiser shall then be made by the Secretary.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water from the Coachella Main Canal or the distribution system and system of protective works herein agreed to be constructed.

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The cost of the appraisal shall be paid by the United States.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner may be appraised in like manner, and the same shall be subject to approval by the Secretary or his authorized representative.

(e) Future sales of such irrigable lands of large landowners shall not carry the right to receive water delivered under said contract of October 15, 1934, for such

land and the District agrees to refuse to deliver water to land so sold until, in addition to compliance with the other provisions hereof:

(i) A verified statement showing the sale price upon any such sale shall have been filed with the District; and

(ii) There shall have been complied with by the landowner such reasonable rules and regulations as may now or hereafter be promulgated by the Secretary for the better administration and enforcement of the Reclamation Law and of the provisions hereof, which may include, among others, the requirement that prior to delivery of water to any District lands acquired from a large landowner, the owner thereof shall furnish the District with an affidavit describing in detail the affiant's purchase of such lands made prior thereto.

(f) The District agrees, by all reasonable means, including the quarterly examination of county records or procurement of necessary title abstract service and otherwise, to ascertain the occurrence and conditions of all sales of such irrigable lands of large landowners and to inform the United States concerning the same.

(g) A true copy of this contract and of each appraisal made pursuant thereto shall be maintained on file in the office of the District and like copies in the office of the Regional Director, United States Bureau of Reclamation, Boulder City, Nevada, and shall be made available for examination during the usual office hours by all persons who may be interested therein.

Excess Lands

29. (a) As used herein the terms "excess land" means that part of the irrigable land within the District in excess of 160 acres held in the beneficial ownership of any single person; or in excess of 320 acres held in the beneficial ownership of husband and wife jointly, as tenants in common, or by the entirety, or as community property; the term "large landowner" means an owner of excess lands; the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein; and the term "irrigable lands within the District" means those lands now or hereafter within the District and lying within the Coachella Service Area, which, in the conclusive determination of the Secretary, are irrigable and susceptible of service from the distribution system herein agreed to be constructed.

(b) Each large landowner as a further condition precedent to the right to receive water delivered under said contract of October 15, 1934, for any of his excess lands shall:

(i) Before the initial delivery date or before the expiration of six months from the announcement thereof, whichever occurs first, execute a valid recordable contract in form satisfactory to the Secretary, agreeing to the provisions herein contained and agreeing to dispose of his excess lands in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and within a period of ten years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed

of within said period of ten years the Secretary shall have the power to dispose of said land subject to the same conditions on behalf of such large landowner subject to conditions all as herein provided; and the District agrees that it will refuse to deliver water to any large landowner other than for his nonexcess lands until such owner meets the conditions precedent herein stated.

(ii) Within thirty days after the date of notice from the United States requesting such large landowner to designate his irrigable lands within the District which he desires to designate as nonexcess lands, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the United States, his written designation and description of lands so selected to be nonexcess lands and upon failure to do so the District shall make such designation and mail a notice thereof to such large landowner, and in the event the District fails to act within such period of time as the Secretary considers reasonable, such designation will be made by the Secretary who will mail a notice thereof to the District and the large landowner. The large landowner shall become bound by any such action on the part of the District or the Secretary and the District will deliver water only to the land so designated to be nonexcess land.

Public Lands Subject to the Act of August 11, 1916, as Amended

30. Those public lands of the United States and entered lands for which no final certificates have been issued, located within the District, and described on the

list which is hereto attached, marked Exhibit "B", and by this reference made a part hereof, are hereby designated as subject to all the provisions of the act entitled "An Act to promote the reclamation of arid lands", approved August 11, 1916 (39 Stat. 506), as amended by the Act of May 15, 1922 (42 Stat. 541); provided, that unentered public lands, while in that status, shall not be assessed by the District for any purpose.

Contract to Be Authorized by Election and Confirmed by Court

31. The execution of this contract by the District shall be authorized by the qualified electors of the District at an election held for that purpose. Thereafter, without delay, the District shall prosecute to judgment proceedings in court for a judicial confirmation of the authorization and validity of this contract. The United States shall not be in any manner bound under the terms and conditions of this contract unless and until a confirmatory final judgment in such proceedings shall have been rendered, including final decision, or pending appellate action if ground for appeal be laid. The District shall, without delay and at its own cost and expense, furnish the United States for its files copies of all proceedings relating to the election upon this contract and the confirmation proceedings in connection therewith, which said copies shall be properly certified by the clerk of the court in which confirmatory judgment is obtained.

Contract Contingent Upon Appropriations

32. This contract is subject to appropriations or allocations being made by Congress or other Governmental financing authorities from year to year of moneys suf-

ficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam Fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, attorneys, or employees, by reason of sufficient moneys not being so appropriated or on account of there not being sufficient moneys in the Colorado River Dam Fund to permit of said allotments.

Notices

33. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Regional Director, United States Bureau of Reclamation, Boulder City, Nevada, except where, by the terms hereof, the same is to be given or made to or upon the Secretary, in which event it shall be delivered, or mailed postage prepaid, to the Secretary of the Interior, at Washington, D. C.

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the District shall be delivered, or mailed postage prepaid, to the Chief Engineer and General Manager of the Coachella Valley County Water District, Coachella, Riverside County, California.

(c) The designation of any person specified in this Article, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this Article for other notices.

Rights Reserved Under Section 3737, Revised Statutes

34. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract Not Exclusive

35. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States or the District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other or subsequent breach of any provision hereof.

Interest in Contract Not Transferable

36. No interest in this contract is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Contract of October 15, 1934, to Remain in Full Force and Effect, Except as Herein Modified

37. Except as modified by the provisions hereof, the aforesaid contract between the United States and the District of date October 15, 1934 (11r-781), shall be and remain in full force and effect.

Priority of Claims of the United States

38. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Officials Not to Benefit

39. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Discrimination Against Employees or Applicants for Employment Prohibited

40. The District shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all subcontracts; Provided, however, That this clause does not refer to, extend to or cover the business or activities of the District which are not related to or involved in the performance of this contract.

Representative of Secretary

41. Where this contract provides for action by the Secretary, such action may be taken subject to review by the Secretary, for and on behalf of the Secretary by his representative duly authorized by him.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By WILLIAM E. WARNE,
Assistant Secretary of the Interior.

COACHELLA VALLEY COUNTY WATER DISTRICT,

By E. KEITH FARRAR
President.

Attest:

BARBARA K. SCHMIDT
Secretary.

(The following exhibits, annexed to the foregoing contract, are omitted here because of the limitations of space:

Exhixit A: "Bureau of Reclamation map entitled Boulder Canyon Project All-American Canal System-California, Coachella Valley County Water District Distribution System and Protective Works."

Exhibit B: "Unentered Public Lands and Entered Lands for which no final certificates have been issued.")

APPENDIX NO. 18

OPERATION CONTRACT: UNITED STATES and IMPERIAL IRRIGATION DISTRICT

March 4, 1952

Contract Amendatory of and Supplemental to All-American Canal Contract Dated December 1, 1932

1. **This Amendatory and Supplemental Contract,** made this 4th day of March, 1952, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, all of which Acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and the Treaty between the United States of America and the United Mexican States signed at Washington, February 3, 1944, the Protocol thereto signed at Washington November 14, 1944, and the reservations included in the consent to ratification by the Senate of the United States, April 18, 1945, providing for the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico all as duly ratified and proclaimed (59 Stat. 1219), hereinafter called the "Mexican Water Treaty" between **The United States of America,** hereinafter referred to as the "United States," acting for this purpose by Oscar L. Chapman, Secretary of the Interior, hereinafter styled the "Secretary," and **Imperial Irrigation District,** an irrigation district created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at El

Centro, Imperial County, California, hereinafter referred to as the "District,"

Witnesseth:

Explanatory Recitals

2. **Whereas,** the United States and the District have heretofore entered into a contract dated December 1, 1932, entitled "Contract for Construction of Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water," hereinafter called "Contract of December 1, 1932," providing, among other things, for the construction of Imperial Dam and the All-American Canal, for the operation and maintenance thereof, for repayment of the cost thereof by the District, for the utilization of power possibilities upon said Canal and for the delivery of water by the United States; and

3. **Whereas,** among other works, Imperial Dam and that Section of the All-American Canal from Imperial Dam to and including Pilot Knob Check and Wasteway have been constructed by the United States; and

4. **Whereas,** the Mexican Water Treaty makes provision for a portion of the waters allocated to Mexico under said Treaty to be diverted at Imperial Dam and delivered to Mexico by means of the All-American Canal and the Pilot Knob Wasteway; and

5. **Whereas,** under the provisions of the Mexican Water Treaty, direct ownership, control and jurisdiction over Imperial Dam and that portion of the All-American Canal from Imperial Dam to and including Pilot Knob Check and Wasteway is required to be retained in the United States within the limits and to the extent necessary to effectuate the provisions of the said Treaty, and

such quirement of the said Treaty will be satisfied if the care, operation and maintenance by the District of the works specified in subsection (b) of Article 10 hereof are under the supervision and control of the Secretary to insure that all diversions are made in accord with Master Schedules and fulfillment at all times of all necessary coordinated actions affecting all diversions; and

6. **Whereas,** the Mexican Water Treaty provides that Mexico shall pay to the United States a proportion of the costs actually incurred in the construction of Imperial Dam and of the All-American Canal from Imperial Dam to and including Pilot Knob Check and Wasteway, as determined by the two Governments, and annually, a part of the total costs of maintenance and operation of such facilities in proportion to the amount of water delivered annually through such facilities for use in each of the two countries; and

7. **Whereas,** under the said Treaty it is provided that in the event that revenues from the sale of hydroelectric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of Imperial Dam and the Imperial Dam-Pilot Knob Section of the All-American Canal, Mexico's part of the cost of said facilities is to be reduced or repaid in the same proportion as the balance of the total costs is reduced or repaid; and

8. **Whereas,** the United States and the District desire to amend and supplement their contract of December 1, 1932, so as to make said contract conform with the obligations of the United States under the Mexican Water Treaty, and to preserve to the United States and to the District the benefits of said contract to the maxi-

mum extent compatible with the provisions of said Treaty;

9. **Now, Therefore,** in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Operation and Maintenance of Certain Works by United States and by District

10. (a) The Secretary, in accordance with the contract of December 1, 1932, has determined and does hereby determine and notify the District, and the District agrees, that construction of all works provided for therein has been completed in accordance with the said contract of December 1, 1932. The Secretary hereby grants to the District permission to install, at its own cost and expense, such structures in the common section of the Main All-American Canal to Coachella Valley at such times, at such points and with such capacities as the District may determine; provided, however, that such permission shall not be construed as modifying the position either of the District or the Secretary with regard to the opening to entry of public lands on the Imperial East Mesa.

(b) At the expiration of sixty (60) days from and after the date of this contract, or at such earlier date as may be otherwise mutually agreed upon, the District, without further or other notice, shall assume the care, operation and maintenance of all of the works not already covered by notice of completion heretofore given by the Secretary to the District, except Laguna Dam, the California Sluiceway and the overflow section of Imperial Dam, and the headworks and other works constructed at the east end of said dam for delivery of water to water

users in Arizona and the desilting works below said headworks, and except those works hereinafter specified in subsection (c) of this article, and thereafter the District shall care for, operate and maintain said works, in accordance with the provisions of this contract and the contract of December 1, 1932.

(c) Anything in the contract of December 1, 1932, to the contrary notwithstanding, the care, operation and maintenance of all turnout structures now or hereafter constructed in the Imperial Dam-Pilot Knob Section of the All-American Canal for service to the Siphon Drop Power Plant, the Yuma Project Main Canal and the lands of the Yuma Project in California shall be retained permanently by the United States, and said turnout structures shall be operated and maintained by the Bureau of Reclamation, without expense to the District, under such rules and regulations as may be promulgated by the Secretary, not inconsistent with this contract or the contract of December 1, 1932; provided, however, that the Secretary shall have the right, with the consent of the District, to contract with any organization of Yuma Project water users for the care, operation and maintenance of said turnouts.

(d) Anything in the contract of December 1, 1932, to the contrary notwithstanding, the care, operation and maintenance of Laguna Dam, the California Sluiceway at Imperial Dam, the overflow section of Imperial Dam and the headworks and other works constructed at the east end of said dam for delivery of water to water users in Arizona and the desilting works below said headworks, shall be retained permanently by the United States; provided, however, that the Secretary shall have the right to,

and the District agrees that he may, contract with any organization of Arizona water users for which capacity is provided in Imperial Dam, for the care, operation and maintenance of the headworks and other works constructed at the east end of said dam for the delivery of water to water users in Arizona, and the desilting works below said headworks.

(e) Immediately after the date of this contract, the District shall advance to the United States the District's share of the estimated cost of operation and maintenance of Imperial Dam and of Laguna Dam by the United States for the balance of the year ending on the last day of the month of February next following; provided, however, that if this contract becomes effective prior to March 1, 1952, the District shall in such event advance to the United States the estimated operation and maintenance costs as aforesaid for the period ending on the last day of the month of February, 1953. Such share to be advanced by the District shall be in the proportion that the capacity provided for the District in Imperial Dam, including capacity utilized in the All-American Canal for water delivery under the Mexican Water Treaty, bears to the total capacity thereof. Thereafter, the District shall on March 1 of each year advance to the United States the District's share of the estimated cost of operation and maintenance of Imperial Dam and of Laguna Dam by the United States for the following twelve months, upon estimates furnished therefor on or before September 1 next preceding; provided, however, that said cost of operation and maintenance of Imperial Dam and Laguna Dam shall not include any part of the cost of the care, operation or maintenance of the headworks and other works constructed at the east end of Imperial Dam

or the desilting works below said headworks. Differences between actual costs and estimates shall be determined by the Secretary and shall be adjusted in next succeeding estimates; provided, however, that if at any time in the Secretary's judgment it shall appear that the amount advanced by the District pursuant to any estimate for a particular period will prove to be insufficient to pay the District's share of the actual costs of operation and maintenance for that period, then the District shall, within forty-five (45) days after receipt of notice advance to the United States such additional amount as may be specified in said notice.

Control of Colorado River

11. The United States, acting through the Secretary, shall continue to have control of the Colorado River for the purpose of carrying out the functions delegated to him by the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), the Colorado River Front Work and Levee System Act of June 28, 1946 (58 Stat. 150, 157), and the Mexican Water Treaty.

Scheduling of Water Diversions at Imperial Dam

12. The Secretary, through the Bureau of Reclamation, shall make appropriate arrangements to obtain a statement of water requirements from all individuals and agencies holding contracts with the United States for the delivery of Colorado River water by means of Imperial Dam, including in addition to such contracting agencies the Bureau of Reclamation and the United States Section of the International Boundary and Water Commission, United States and Mexico, not later than Wednesday of each week, of their respective daily water requirements

within their legal entitlements, which statement shall also include the additional water, if any, to be utilized by the Bureau of Reclamation for power generation at Siphon Drop and by the District for power generation at Pilot Knob, for the week commencing Monday next following. Requirements for all water to be scheduled for use through the All-American Canal except those for power use at Siphon Drop, the Yuma Project and to meet Treaty requirements shall be provided by the District. Immediately upon receipt of such statement of water requirements, the Bureau of Reclamation shall prepare a Master Schedule of all water diversions to be made at Imperial Dam for delivery and/or use in the United States, including the amounts of water to be utilized for power generation at Siphon Drop and Pilot Knob, and to Mexico through the All-American Canal under the Mexican Water Treaty during the week commencing Monday next following. In addition, such schedule shall also indicate the quantity of water, if any, reasonably required to be used in the United States during such week for river regulation below Imperial Dam (giving due consideration to the effect of such use on the availability of water for diversions at Imperial Dam and, in so far as practicable, such use shall be scheduled, after consultation with the District, at times and in amounts as will result in the least possible dislocation of such diversions at Imperial Dam) and the quantity of water, if any, to be delivered to Mexico under the Mexican Water Treaty by means other than through the All-American Canal and/or from water used for generation of power at Siphon Drop and Pilot Knob. A copy of such Master Schedule shall be furnished to the District not later than 48 hours before such schedule is to take effect. All diversions and re-

leases of water at Imperial Dam shall be in substantial accordance with such Master Schedule. Adjustments in the Schedule may be made at the request of any participant upon approval thereof by the Secretary. When thus approved such adjustments shall be made as soon as reasonably practicable. In the event of emergency occasioned by flood or for any other compelling reason of an emergent nature, the Bureau of Reclamation shall advise the District and others diverting water at Imperial Dam of any changes which may thus become necessary in scheduled diversions and deliveries, and such changes shall be promptly made and observed by the District, but the District shall not be required to increase diversions to the All-American Canal as a result thereof Nothing herein nor operations hereunder shall be construed as intended to alter, affect, or interpret the extent of legal entitlement and/or use of any participant in said Master Schedule. The preparation and approval of a Master Schedule by the Bureau of Reclamation or the Secretary shall not constitute an administrative determination, finding or recommendation as to the water to which any agency is entitled.

Establishment of Imperial Dam Advisory Board

13. The Secretary shall promptly make arrangements for the organization of an Advisory Board, hereby designated "Imperial Dam Advisory Board," which shall be composed of one representative from each of the agencies contracting for and entitled to deliveries of water to be diverted at Imperial Dam, the Bureau of Reclamation, and the United States Section of the International Boundary and Water Commission. Meetings of the Board shall be held at such times and at such places as may be agreed

upon by a majority of its members. The purpose of the Board shall be to provide a means of consultation and cooperation in matters of mutual concern relating to the operation and maintenance of Imperial Dam and Laguna Dam, the diversion of waters to the All-American Canal and the Gila Project Main Canal, and in such other matters of mutual concern as may be agreed upon by its members. Determinations of the Board shall be advisory only.

Delivery of Treaty Water Through All-American Canal

14. (a) The District, in full accordance with the requirements set forth in this contract, shall divert at Imperial Dam, transport through the All-American Canal and deliver to the United States Section of the International Boundary and Water Commission at the junction of Pilot Knob Wasteway and the Alamo Canal the water made available by the United States at Imperial Dam which Mexico is entitled to receive under the provisions of Article 11 (c) of the Mexican Water Treaty, as shown by the Master Schedule to be furnished the District by the Bureau of Reclamation. Such deliveries shall be made under and in accordance with rules and regulations as may from time to time be promulgated by the Secretary not inconsistent with this contract or said Treaty.

(b) The works required or used and the services furnished by the District in making the water deliveries referred to in subsection (a) of this article shall be provided and furnished without in any manner modifying the obligations of the District for the repayment to the United States of the construction cost of such works under the provisions of the contract of December 1, 1932.

(c) It shall be in the sole discretion of the United States to determine the share Mexico is to pay under the provisions of Article 14 (b) of said Treaty, of the cost of operation and maintenance of All-American Canal System, and the portion, if any, of such costs which shall be paid by the United States, and how much, if any, of such amounts shall be received by the District by way of credits or otherwise.

(d) Nothing in this article shall be construed as constituting or affecting interpretation of Article 14 of said Treaty.

Assumption of Operation and Maintenance of Works by United States

15. The District's officers and/or employees concerned with the diversion of water at Imperial Dam, and those concerned with diversion at Pilot Knob Check of water destined for Mexico under the Mexican Water Treaty, shall, in the event that said officers and/or employees fail to operate said works so that diversions are made in substantial accordance with the Master Schedule prepared pursuant to Article 12 of this contract, be subject to the orders of the Bureau of Reclamation as the representative of the Secretary in the over-all coordination of river operations. If at any time, or during such times as, in the opinion of the Secretary such officers and/or employees of the District shall fail to comply with the applicable rules and regulations promulgated under this contract or the contract of December 1, 1932, with the instructions issued by the Bureau of Reclamation because of emergencies occasioned by flood or for any other compelling reason of an emergent nature, or substantially with the requirements of the Master Schedule,

in a manner satisfactory to the Secretary, then the Secretary shall, with or without notice to the District, forthwith remove District employees engaged in any of such operations and replace them with Government employees, and shall assume operation and maintenance of the headworks at Imperial Dam and the works at Pilot Knob affecting the diversion of water destined for Mexico under the Mexican Water Treaty either or both, and retain such operation and maintenance during such period or periods of time as he deems necessary: provided, however, that unless the action of such District officers and/or employees complained of creates an emergency or is such as to materially interfere with the United States carrying out its obligations under the Mexican Water Treaty, the Secretary will first, before removing such District employees and assuming operation and maintenance of said works, give notice to the District of such action complained of and a reasonable opportunity, not to exceed three (3) days after receipt of such notice by the District, for the District to correct the situation." In such event the District shall, within ten (10) days after written notice by the Secretary, advance to the United States its pro-rata share of the estimated cost of such care, operation and maintenance by the United States, plus fifteen percentum (15%) to cover overhead and general expense, for the period specified in said notice: provided, however, that said period shall not exceed sixty (60) days. Additional amounts plus a like percentage thereof shall, within ten (10) days after subsequent notices, be advanced as specified in such subsequent notices; provided, however, that each said subsequent notice shall be for a period not exceeding sixty (60) days. Any surplus of funds advanced by the District remaining unexpended and

unobligated at such time as the operation and maintenance of such works is resumed by the District shall be refunded to the District. The rights reserved to the United States to assume operation and maintenance of works under the provisions of this article shall be deemed to be in addition to any rights which the United States has under the contract of December 1, 1932, and such assumption of operation and maintenance by the Secretary shall not relieve the District from its obligations hereunder or under said contract of December 1, 1932. Operation and maintenance by the District shall be restored when the Secretary finds that the situation which occasioned the assumption of operation and maintenance by the United States has been satisfactorily corrected.

Development of Power Possibilities at Pilot Knob

16. (a) As of the date of this contract, the District shall be deemed to have the permission of the United States to proceed with the development of the power possibilities upon the All-American Canal at or near Pilot Knob, as provided by the Boulder Canyon Project Act and the contract of December 1, 1932, subject only to approval by the Secretary of the District's plans for constructing and connecting diversion works in the bank of the All-American Canal for the purposes of said power development. Upon application therefor, the Secretary will grant to the District such easements over the public and acquired lands of the United States as may be, in his opinion, reasonably necessary for the construction, operation and maintenance by the District of a power plant and appurtenant facilities at the aforesaid location. Without affecting the rights which the District has to the development of the aforesaid power possibilities, and the use

of water therefor, under the provisions of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), and the contract of December 1, 1932, the District may utilize for purposes of Pilot Knob power generation the water to be delivered to Mexico through the All-American Canal in pursuance of the Mexican Water Treaty and other water available in the river at Imperial Dam which is not required for use in the United States which latter use shall include use for river regulation below Imperial Dam as provided in Article 12 hereof; provided, however, that in no event and under no circumstances shall the use of water for power purposes at the Pilot Knob Power Plant interfere with the delivery of water for use in Mexico under the terms of the Mexican Water Treaty, and it shall be the duty and the obligation of the District to make provision for, and to so operate its power plant at Pilot Knob and the Pilot Knob Wasteway as to provide a continuous flow of water at the junction of Pilot Knob Wasteway and the Alamo Canal at times and in amounts not less than those stated in the Master Schedule of water diversions and deliveries to be furnished by the Bureau of Reclamation as provided for herein.

(b) If and when the United States shall have acquired title to the Rockwood Gate and that part of the Alamo Canal situate in the United States, Rockwood Gate shall be used by the United States as a wasteway from the All-American Canal to the Colorado River, in connection with the operation by any agency of the All-American Canal and the Pilot Knob Wasteway, or other wasteway from the said All-American Canal, or the tailrace from any power plant which may be constructed at or near the Pilot Knob Wasteway, subject to the paramount use of

said Rockwood Gate to deliver water to Mexico by means of the All-American Canal as required by Articles 11 (c) and 12 (c) of the Mexican Water Treaty; and said use of said Rockway Gate as a wasteway to the Colorado River will be permitted by any agency of the United States, or by the District, which may be operating said All-American Canal and/or Pilot Knob Wasteway, or other wasteway or tailrace as above mentioned, subject to the paramount use of said Rockwood Gate to deliver water to Mexico, as aforesaid. In consideration of the aforesaid use of Rockwood Gate by the District, the District does hereby release the United States, its agencies, officers and employees, from any and all claims for damages caused by any loss of power head arising out of such use of the Rockwood Gate for the purpose of making delivery of Treaty waters to Mexico, as aforesaid.

(c) The development of power by the District at the Pilot Knob Power Plant is made upon the express condition and with the express covenant that the District shall observe and be subject to and controlled by the Colorado River Compact, the Boulder Canyon Project Act, the California Limitation Act, and the Mexican Water Treaty, in the construction and management and operation of said power plant and the storage, diversion, delivery and use of water for the generation of power at said plant.

(d) At such time or during such times as the Secretary assumes the care, operation and maintenance of the headworks at Imperial Dam or the Imperial Dam-Pilot Knob Section of the All-American Canal, either under the provisions hereof or the provisions of the contract of December 1, 1932, the flow of water through Pilot Knob Power Plant shall be as directed by the Secretary, and

the employees of the District operating said plant shall observe and carry out all such directions. In the event said employees fail or refuse to so regulate the flow through said power plant, the Secretary shall have the right, with or without notice to the District, to close the intake gates to the penstocks of said power plant and to keep them closed for such period or periods as he deems necessary.

Effect on Contract of December 1, 1932

17. Except as expressly amended or supplemented hereby, the aforesaid contract between the United States and the District, dated December 1, 1932, shall be and remain in full force and effect.

Priority of Claims of the United States

18. Claims of the United States arising out of this contract shall have priority over all others, secured and unsecured.

Remedies under Contract not Exclusive

19. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States or the District of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Interest in Contract not Transferable

20. No interest in this contract is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Rights Reserved under Section 3737 Revised Statutes

21. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Force Majeure

22. Neither party to this contract shall be held accountable for failure to perform occasioned by Act of God or of the public enemy or other unforeseen or unavoidable cause.

Officials Not to Benefit

23. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Secretary's Representative

24. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term "Secretary" shall mean the Secretary or his duly authorized Federal representative.

Discrimination Against Employees or Applicants for Employment Prohibited

25. The District shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all subcontracts; provided, however, that this clause does not refer to, extend to or cover the business or activities of the District which are not related to or involved in the performance of this contract.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By OSCAR L. CHAPMAN
Secretary of the Interior

IMPERIAL IRRIGATION DISTRICT,
By EVAN T. HEWES
President

[Seal]

Attest:

.....
Secretary

APPENDIX NO. 19

WATER DELIVERY CONTRACT: UNITED STATES AND METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 24, 1930

(1) This Contract, made this 24 day of April, nineteen hundred thirty, pursuant to the Act of Congress approved June 17, 1902, (32 Stat., 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the Act of Congress approved December 21, 1928, (45 Stat., 1057), designated the Boulder Canyon Project Act, between The United States of America, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and The Metropolitan Water District of Southern California, a public corporation, hereinafter styled the District, organized and existing under the laws of the State of California;

Witnesseth:

Explanatory Recitals

(2) Whereas, for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, ade-

quate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water; and

(3) Whereas, after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Canyon Dam, creating thereby a reservoir to be hereinafter styled the Boulder Canyon Reservoir and has determined that the revenues provided for by this contract, together with other contracts in accordance with the provisions of the Boulder Canyon Project Act, are adequate in his judgment to insure payment of all expenses of operation and maintenance of the Boulder Canyon Dam and appurtenant works incurred by the United States, and the repayment within fifty (50) years from the date of completion of said works of all amounts advanced to the Colorado River Dam Fund under Subdivision (b) of Section 2 of the Boulder Canyon Project Act, together with interest thereon made reimbursable under said Act; and

(4) Whereas, the District is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir;

(5) Now, Therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by United States.

(6) The United States shall deliver to the District each year from the Boulder Canyon Reservoir at a point in the Colorado River immediately below Boulder Canyon Dam, or as provided in Article 10 hereof, up to but not to exceed one million fifty thousand (1,050,000) acre

feet of water, which shall be delivered continuously as far as reasonable diligence will permit; provided, that such amount is without prejudice to any additional rights which the District may have or acquire in or to the waters of the Colorado River, or to the power of the parties to contract hereafter with reference thereto. The United States shall not be obligated to deliver water to the District when for any reason such delivery would interfere with the use of Boulder Canyon dam, and reservoir for river regulation, improvement of navigation, flood control, and/or satisfaction of present perfected rights, in or to the waters of the Colorado River, or its tributaries, in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition and with the express covenant that the right of the District to waters of the Colorado River, or its tributaries, is subject to and controlled by the Colorado River Compact. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacement or installation of equipment and/or machinery at Boulder Canyon Dam, but so far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur. This contract is for permanent service, but is made subject to the express covenant and condition that in the event water for the District is not taken or diverted by the District hereunder for District purposes within a period of ten (10) years from and after completion of Boulder Canyon Dam as an-

nounced by the Secretary; it may in such event, upon the written order of the Secretary, and after hearing become null and void and of no effect . . .

Receipt of Water by District

(7) The District shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery above stated and shall at its own expense convey such water to its proposed aqueduct, and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

Measurement of Water

(8) The water to be delivered hereunder shall be measured at the intake of the District's proposed aqueduct by such measuring and controlling devices or such automatic gauges or both, as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gauges, shall be furnished, installed and maintained by and at the expense of the District, but they shall be and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights-of-way of the District.

Record of Water Diverted

(9) The District shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River. Such reports shall be made by the fifth day of the month immediately succeeding the month in which the water is diverted, and the records

and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

Charge for Delivery of Water

(10) A charge of twenty-five cents ($0.25) per acre-foot shall be made for water delivered to the District hereunder during the Boulder Dam cost repayment period. It is understood by the District that it may divert water above Boulder Canyon Dam, but that such diversion of water above the dam will reduce the amount of power otherwise available at said dam, and may reduce the amount which would have been utilized, except at times when the reservoir is spilling, and an additional charge, determined as stated below, will be made on account of any such reduction in energy which would otherwise have been utilized in case water is diverted above the dam. The energy which could have been generated by the water diverted above the dam and which would have been utilized at times when the reservoir is not spilling will be calculated from the effective head, the quantity of water diverted and the overall efficiency of the power plant, as determined by the Secrtary, whose determination shall be conclusive and binding upon the parties hereto. The additional charge per month for diversion above the dam will be the product of such amount of energy and the rate per kilowatt hour for firm energy at Boulder Canyon Dam in effect at the time of such diversion. Nevertheless if such diversion during any year (June 1st to May 31st, inclusive) has not reduced the amount of firm energy during such year, for which the United States has contracted, the diversion, to the extent that no reduction in firm energy has been occasioned, shall be computed at the rate for secondary energy then in force and credit given on the ensuing year's power bills of the District for

the difference between the amount charged therefor and the amount so determined. The Secretary's determination of such credit shall be conclusive. The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise. Energy equivalent to water delivered above the dam, determined as above, for which the firm energy rate is charged, shall be included in the total firm energy available at the dam, defined as four billion, three hundred thirty million (4,330,000,000) kilowatt hours per year (June 1st to May 31st, inclusive), upon completion of the dam, as announced by the Secretary, and decreasing uniformly thereafter by eight million seven hundred sixty thousand (8,760,000) kilowatt hours per year, and also included in the District's allotment of firm energy. Nevertheless if it be determined by the Secretary that the rate of decrease above stated is not in accord with actual conditions, the Secretary reserves the right to fix a lesser rate for any year (June 1st to May 31st, inclusive) in advance:

Monthly Payments and Penalties

(11) The District shall pay monthly for all water delivered to it hereunder, or diverted by it from the Colorado River, in accordance with the rate herein in Article ten (10) established. Payments shall be due on the first of the second month immediately succeeding the month in which water is delivered and/or diverted. If such charges are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum (1%) of the amount unpaid shall be added on the first day of each calendar month during such delinquency.

Refusal of Water in Case of Default.

(12) The United States reserves the right to refuse to deliver water to the District in the event of default for a period of more than twelve (12) months in any payment due or to become due the United States under this contract.

Inspection by the United States

(13) The Secretary or his representatives, shall at all times have the right of ingress to and egress from all works of the District for the purposes of inspection, repairs and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the District relating to the diversion and distribution of water delivered to it hereunder with the right at any time during office hours to make copies of or from the same.

Disputes or Disagreements.

(14) Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration the District shall name one arbitrator and the Secretary shall name one arbitrator and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after the first meeting, such arbitrators not so elected, shall be named by the Senior

Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Rules and Regulations

(15) There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the District and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments hereof, or to protect the interests of the United States. The District hereby agrees that in the operation and maintenance of its diversion works and aqueduct, all such rules and regulations will be fully adhered to.

Agreement Subject to Colorado River Compact

(16) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

Priority of Claims of the United States

(17) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contingent Upon Appropriations

(18) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam Fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam Fund to permit of said allotments. This agreement is also subject to the condition that if Congress fails to appropriate moneys for the commencement of construction work within five (5) years from and after execution hereof, or if for any other reason construction of Boulder Canyon Dam is not commenced within said time and thereafter prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon one (1) year's written notice to the other party hereto.

Rights Reserved Under Section 3737 Revised Statutes

(19) All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract Not Exclusive

(20) Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

Interest in Contract Not Transferable

(21) No interest in this agreement is transferable, and no sublease shall be made, by the District without the written consent of the Secretary, and any such attempted transfer or sublease shall cause this contract to become subject to annulment, at the option of the United States.

Member of Congress Clause

(22) No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

(Executed in quadruplicate original)

THE UNITED STATES OF AMERICA,
By RAY LYMAN WILBUR
Secretary of the Interior

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA,
By W. P. WHITSETT
Chairman of the Board of Directors
(Seal)

Attest:
NORTHCUTT ELY

Approved as to form:
W. B. MATHEWS
General Counsel

Attest:
G. H. FINLEY
Secretary of the Board of Directors

APPENDIX NO. 20

POWER CONTRACT TO PUMP WATER: UNITED STATES AND METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 26, 1930

(1) **This Contract,** made this 26th day of April, nineteen hundred thirty, pursuant to the Act of Congress approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat., 1057), designated the Boulder Canyon Project Act, between **The United States of America,** hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and **The Metropolitan Water District of Southern California,** a public corporation, organized and existing under and by virtue of the Laws of the State of California, hereinafter styled the District:

Witnesseth:

Explanatory Recitals

(2) **Whereas,** for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain

a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre feet of water; also to construct, equip, operate and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and

(3) **Whereas,** after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Canyon Dam, and has determined that the revenues provided for by this contract, together with other contracts in accordance with the provisions of the Boulder Canyon Project Act, are adequate in his judgment to insure payment of all expenses of operation and maintenance of the Boulder Canyon Dam and appurtenant works incurred by the United States, and the repayment within fifty (50) years from the date of completion of said works of all amounts advanced to the Colorado River Dam Fund under Subdivision (b) of Section 2 of the Boulder Canyon Project Act, together with interest thereon made reimbursable under said Act; and

(4) **Whereas,** the United States proposes to enter into an agreement with the City of Los Angeles and Southern California Edison Company Ltd., severally (hereinafter referred to as the lessees) for the lease, and the operation and maintenance of a Government-built power plant to be constructed at Boulder Canyon Dam, together with the right to generate electrical energy a copy of which said

proposed lease is attached hereto marked Exhibit "A," and by this reference made a part hereof, wherein the Secretary has reserved the authority to, and in consideration of the execution thereof is authorized by each of the aforesaid lessees, severally, to contract with the other allottees named in the allocation set forth therein for the furnishing of energy to such allottees at transmission voltage in accordance with the allocation to each allottee, and the Secretary is therein granted by each lessee, severally, the power in accordance with the provisions thereof to enforce as against each lessee the rights to be acquired by such other allottees by contracts to be entered into with the United States; and

(5) **Whereas,** the District is desirous of entering into a contract with the United States providing for the delivery to the District each year from the Boulder Canyon Reservoir up to but not to exceed one million fifty thousand (1,050,000) acre-feet of water, and, in connection therewith an incident thereto, the District is desirous also of entering into a contract for the purchase of electrical energy to be generated at the power plant to be leased, as aforesaid, to the City of Los Angeles (hereinafter referred to as the City) and Southern California Edison Company Ltd., (hereinafter referred to as the Company) to aid in the transportation of such water supply;

(6) **Now, Therefore,** in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to-wit:

Allocation of Electrical Energy

(7) The United States will cause to be delivered to the District under and in pursuance of and subject to the provisions of the aforesaid proposed lease, attached here-

to as Exhibit "A", for a period of fifty (50) years from the date at which energy is ready for delivery to the City, as announced by the Secretary, in accordance with the following allocation, to-wit:

Of Firm Energy

A. To the State of Nevada, for use in Nevada, not exceeding eighteen per centum (18%) of said total firm energy.

B. To the State of Arizona, for use in Arizona, not exceeding eighteen per centum (18%) of said total firm energy.

Should either of the States not take its full eighteen per centum (18%) allocation within a period of twenty (20) years hereof, the other may then contract for the energy not so taken up to four per centum (4%) of the total firm energy, provided that the combined amount used by the two states shall not, at any time, exceed thirty-six per centum (36%) of such total firm energy.

C. To the Metropolitan Water District of Southern California so much energy as may be needed and used for pumping Colorado River water into and in its aqueduct for the use of such District within the following limits:

(1) Not exceeding thirty-six per centum (36%) of said total firm energy; plus

(2) All secondary energy developed at the Boulder Dam power plant as provided in Article Fourteen (14) hereof; plus

(3) So much of the firm energy allocated to the States, the City and the Company as may

not be in use by them. Energy allocated to the States, but not in use by them, shall be released to the District by the two lessees equally (unless they agree upon a different ratio) as follows:

(a) If the District makes a firm contract with the Secretary for the balance of the lease period for part or all of such unused States energy (subject to the first right of the States thereto) such contract shall be made effective upon two years' written notice to the Secretary, and compensation to the lessees, respectively, for main transmission line property rendered idle;

(b) If the District does not so make a firm contract for such energy, then energy allocated to the States but not in use by them, shall be released to the District upon not less than fifteen months' written notice to the Secretary and at such compensation as the District and such lessees, respectively, may agree upon, to cover cost and overhead of replacing energy which otherwise would have been received at the Pacific Coast end of the main transmission lines by the lessees, respectively. Such cost shall include interest on and depreciation and operation and maintenance of the plant capacity while required for the generation of such substitute energy; and also appropriate allowance for interest on and maintenance and depreciation of plant capacity rendered idle because of cessation of generation of such substitute energy until such time

as such plant capacity would otherwise have been installed by the lessees, respectively, for their own requirements. If the District and the respective lessees fail to agree on such compensation, such energy shall nevertheless be released to the District, and the disagreement shall be determined in accordance with Article twenty-two (22) (a) hereof. Such determination shall include allowance for items of cost and overhead as specified in this paragraph. Pending such determination, energy so released shall be paid for by the District at the rate for firm energy but the determination of compensation under Article twenty-two (22) (a) hereof shall not be controlled by such rate.

During any year beginning June first, the District shall not use any secondary energy or any unused State energy, until it has first used subsequent to June first, next preceding, an amount of firm energy equivalent to one-twelfth of the amount of firm energy it is obligated to take and/or pay for annually multiplied by the number of months elapsed since June first next preceding.

(4) If, due to temporary deficiency in secondary energy regularly used by the District, substitute energy is requested by the District in excess of the energy made available under the foregoing sub-paragraph (3) (b) the City and/or the Company may release so much energy as may be practicable on the same terms as provided in sub-section (3) (b) preceding.

D. To the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Fullerton, Glendale, Newport Beach, Pasadena, Riverside, San Bernardino and Santa Ana, (referred to herein as "the municipalities"), six per centum (6%) in all, to be allocated between them as they may agree; but if no agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

E. To the City of Los Angeles, Thirteen per centum (13%).

F. To Southern California Edison Company Ltd., the Southern Sierras Power Company, the San Diego Consolidated Gas and Electric Company and the Los Angeles Gas and Electric Corporation, referred to herein as the companies, nine per centum (9%) in all, division whereof between the companies shall be made according to mutual agreement among them, if possible. If no such agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

The foregoing allocations are subject to the following conditions:

(i) So much of the energy allocated to the States (thirty-six per centum (36%) of the firm energy) and not in use by them, or failing their use, by the District for the above purposes, shall be taken and paid for one-half by the City and one-half by the Company.

(ii) All of the energy allocated to the municipalities may be contracted for in compliance with regulations of the Secretary, by any one or more of them, as they may agree, on or before April 15, 1931. So much of the energy allocated to the municipalities as is not so contracted for, or if contracted for, not used by them directly or under contract for municipal purposes and/or distribution to their inhabitants, shall be taken and paid for by the City.

(iii) So much of the energy allocated to the Southern Sierras Power Company, the San Diego Consolidated Gas and Electric Company, and the Los Angeles Gas and Electric Corporation as is not firmly contracted for by them, severally, in compliance with regulations of the Secretary on or before April 15, 1931, shall be taken and paid for by the Company.

(iv) If any allottee is permitted by the United States to divert water from the reservoir, at a time when the reservoir is not spilling, in consequence of which the amount of energy which would have been utilized is diminished, such diminution shall be debited to the allocation of firm energy herein made to such allottee; and charge for the energy equivalent of such diversion shall be made, and the amount of energy which the allottee shall otherwise be obligated to take and pay for hereunder shall be correspondingly reduced.

The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise.

(v) Each of the States of Arizona and Nevada may, from time to time within the period of the aforesaid lease, contract for energy for use within such State in any amount until the total allocated respectively to each is in use as provided above; and may terminate such contract, or contracts, without prejudice to the right to again contract for such energy. All such contracts shall be executed with the Secretary. A contract requiring one thousand (1000) horsepower (of maximum demand) or less may become effective or be terminated on six months written notice of requirement or termination given the Director by the State; provided, that the notice given shall be two years if in the twelve months preceding said notice of demand the total increment to such state has exceeded five thousand (5000) horsepower of maximum demand or if in the twelve months preceding said notice of termination the decrement to such state has exceeded five thousand (5000) horsepower of maximum demand. In all cases the Director shall immediately transmit such notice to each lessee. Whenever the amount in use is in excess of five thousand (5000) horsepower of maximum demand, the lessees respectively shall be compensated for

property rendered idle by use of such excess in such amount as the Secretary shall determine to be equitable. Firm energy not contracted for by the States shall be available for use by the District as herein elsewhere provided, and if not in use by the States and/or the District, shall be taken and paid for equally by the two lessees. No right which may be available to a State under section five 5 (c) of the Boulder Canyon Project Act to execute a firm contract for electrical energy for use within the State shall be impaired by any provision of this contract.

Of Secondary Energy.

The District shall have the right to purchase and use all secondary energy as provided in Article nine (9) and Article fourteen (14) hereof for the purposes stated in the first paragraph of subdivision (C) of this Article. The City and the Company shall each have the right to purchase and use one-half of all secondary energy not used by the District. Any such energy not used by one lessee shall be available, for the time being, to the other. If secondary energy is not taken by the District, the City, and/or the Company then and in such event, the United States reserves the right to take, use and dispose of such energy, from time to time, as it sees fit, giving credit therefor as provided in Article twelve (12) of Exhibit "A" hereof.

Of Firm Energy Allocated to but not Used by the District.

In the event the District shall fail for any reason to use all or any of the firm energy herein allotted to it for the only purpose for which said firm energy is allotted to it, that is, for pumping water into and in its aqueduct; then no disposition shall be made of such firm energy by the Secretary without first giving to a successor to the District which may undertake to build or maintain a Colorado River Aqueduct the opportunity to take said firm energy for the same purpose and under the same terms as those to which the District was obligated.

In the event no such successor takes said firm energy as provided above, then no disposition of such firm energy shall be made by the Secretary without first giving to each lessee the opportunity to contract on equal terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other lessee shall not elect to take.

Of Firm Energy not Disposed of Under the Foregoing Allocations.

The United States reserves the right, in case the dam which it erects provides a maximum water surface elevation in excess of one thousand two hundred twenty-two (1222) feet above sea level (U. S. Geological Survey Datum), and thereby increases the quantity of firm energy above the quan-

tity of four billion two hundred forty million (4,240,000,000) kilowatt hours allocated above, to dispose of such increase, but not to exceed ninety million (90,000,000) kilowatt hours per year (June 1st to May 31st, inclusive) to any municipality or municipalities by firm contract executed with the Secretary on or before April 15, 1931. Such disposition shall be without prejudice to any provision of this lease or of the allocation above referred to. So much of such additional energy as is not so contracted for shall be taken and paid for by the City. Generation of such additional energy shall in any event be effected by the City.

Installation of Machinery

(8) The District shall have opportunity to be heard by the Secretary or his representatives upon the design, capacity and cost of machinery to be provided and installed as stated in Article eight (8) of Exhibit "A" hereof before contracts therefor are let.

Firm and Secondary Energy Defined

(9) The amount of firm energy for the first year of operation, (June 1 to May 31, inclusive) following the date of the completion of the dam as announced by the Secretary shall be defined as being four billion two hundred forty million (4,240,000,000) kilowatt hours at transmission voltage. For every subsequent year the amount defined as firm energy shall be decreased by eight million seven hundred sixty thousand (8,760,000) kilowatt hours from that of the previous year.

Nevertheless, if it be determined by the Secretary that the rate of decrease of kilowatt hours per year as above stated, is not in accord with actual conditions, the Secretary reserves the right to fix a lesser rate for any year (June 1st to May 31st, inclusive) in advance.

If the dam erected by the United States provides a maximum water surface elevation in excess of 1222 feet above sea level (U. S. Geological Survey Datum), the United States reserves the right to dispose of additional firm energy thereby made available, not to exceed ninety million (90,000,000) kilowatt hours per year, subject to pro rata of the eight million seven hundred sixty thousand (8,760,000) kilowatt hours annual diminution above provided for.

The term "secondary energy" wherever used herein shall mean all electrical energy generated in one year (June 1st to May 31st, inclusive) in excess of the amount of firm energy as hereinabove defined, available in such year.

If, by reason of international obligations arising through treaty or otherwise subsequent to the effective date of this contract, or by reason of interference with the program of construction and/or operation of the dam as provided for and contemplated by this contract, or by reason of other contingencies not now foreseen, the amount of firm energy available through the release of water from the Boulder Canyon reservoir shall in fact be less than the amount of firm energy as above defined, then in any such event the obligation of the District to take and pay for its allocation of firm energy shall be reduced in an amount corresponding to such change. If for any reason the United States shall be wholly unable

to fulfill its obligations hereunder in respect of the delivery of water, then the District or either of them, may terminate this contract.

The right of the District and or lessees to take and pay for energy at the rate for secondary energy after discharge of such party's obligation to the United States to pay for energy at the rate for firm energy, shall not be impaired by reason of the fact that another allottee has not discharged its obligation to pay for energy at the rate for firm energy.

Generating Agencies

(10) In accordance with designation heretofore made by the Secretary, generation of energy allocated to the District shall be effected by the City. Nevertheless this provision is subject to the following conditions:

(i) Should it prove of material economic advantage to the District to have a portion of its energy generated as off-peak energy, the City, after generating energy for the District to the full extent of the generating capacity which has been installed at the request of the District with allowance for the contemplated margin of reserve capacity, shall also generate such additional energy as may be needed by the District, and as can be generated off-peak with other generating capacity leased to and being operated by the City at such times as such use does not conflict with the needs of the City and other allottees for whom the City is generating energy. The District will pay for the off-peak use of such other generating capacity together with an allowance for a fair proportion of the operation and maintenance expenses at rates to be agreed upon between the District and the City and approved by the Secretary and if they are unable to agree

then at a rate to be determined by the Secretary. Should the amount of energy which can be obtained by the District, from the generating capacity which has been installed at the request of the District and from other capacity leased to and being operated by the City, be insufficient to satisfy the requirements of the District, then the District may arrange with Southern California Edison Company Ltd. for generation of such off-peak energy as may be needed by the District at such times and not obtainable from the City to such an extent as such generation does not conflict with the needs of the Company and other allottees for whom the Company is generating energy. Charge shall be made against the District for such service at the rate to be agreed upon between the District and the Company and approved by the Secretary and if they are unable to agree then at a rate to be determined in accordance with Article twenty-two (a) hereof.

(ii) Disputes and disagreements between any allottee and the lessee generating energy for it, with respect to such generation, and/or the cost thereof, shall be determined by the Secretary unless otherwise specifically provided in this contract.

(iii) Except for off-peak power furnished the District which shall be as provided in Paragraph (i) of this Article, all generation shall be effected at cost as determined in accordance with Article 12 of Exhibit "A" hereof.

Delivery of Electrical Energy

(11) (a) Energy shall be ready for delivery to the City and to the municipalities including those contracting under the last paragraph of Article seven (7) hereof

when the Secretary announces that one billion, two hundred fifty million (1,250,000,000) kilowatt hours of energy per year is ready for delivery.

(b) Energy shall be ready for delivery to the District when the Secretary announces that two billion (2,000,000,000) kilowatt hours of energy per year is available, which date, however, shall not be sooner than one (1) year after energy is ready for delivery to the City, provided, however, that the time when energy is ready for delivery to the District may be advanced subject to the approval of the Secretary, should the District so request, and that in such case the City shall be compensated by the District for interest and depreciation on and maintenance and operation of its main transmission line in case the total energy available to the City is reduced below one billion two hundred fifty million (1,250,000,000) kilowatt hours per annum, in the proportion that such kilowatt hours available to the City is less than one billion two hundred fifty million (1,250,000,000).

(c) Energy shall be ready for delivery to the Company when the Secretary announces that water capable of generating four billion two hundred forty million (4,240,000,000) kilowatt hours of energy per year is available, which date, however, shall not be sooner than three (3) years after commencement of delivery of energy to the City and which shall not be until the water surface in Boulder Canyon Reservoir on August first immediately preceding has reached an elevation of eleven hundred fifty (1150) feet above sea level (U. S. Geological Survey datum).

(d) Upon written notification from the Secretary that generation equipment is ready for operation by it and

water is available for generating energy therefrom, each lessee will be required to assume the operation and maintenance of its respective portion of the power plant, and thereafter the District will look to such lessee, severally, and not to the United States for compensation for injury and or damages of any kind which may in any manner arise out of the operation and maintenance of the portion of such plant leased to it.

Charges to be Paid the United States

(12) In consideration of this contract, the District agrees:

(1) To pay the United States for the use of falling water for generation of energy for the District, (except as otherwise provided in Article 15 hereof), as follows:

(a) One and sixty-three hundredths mills ($0.00163) per kilowatt hour, (delivered at transmission voltage) for firm energy;

(b) One-Half mill ($0.0005) per kilowatt hour, (delivered at transmission voltage) for secondary energy;

(2) To pay the United States, for credit to the lessees, on account of use of the leased equipment as herein elsewhere provided; and

(3) To pay the United States, for credit to the lessees, on account of maintenance of said equipment, including repairs to and replacements of machinery, as herein elsewhere provided.

At the end of fifteen (15) years from the date of execution of, this contract and every ten (10) years there-

after, the above rates of payment for firm and secondary energy shall be readjusted upon demand of any party hereto, either upward or downward as to price, as the Secretary may find to be justified by competitive conditions at distributing points or competitive centers.

The rate for falling water for generation of firm energy which shall be uniform for both lessees provided for by any such readjustment shall be arrived at by deducting from the price of electrical energy justified by competitive conditions at distributing points or competitive centers,—(1) all fixed and operating costs of transmission to such points,—(2) all fixed and operating costs of such portion of the power plant machinery as is to be operated and maintained by the several lessees, including the cost of repairs and replacements, together with such readjustment as to replacements as is provided for in paragraph 3 in this Article; it being understood that such readjusted rates shall under no circumstances exceed the value of said energy, based upon competitive conditions at distributing points or competitive centers.

"In arriving at the respective rates for "firm energy" and "secondary energy" as fixed herein, recognition has been given to the fact that "secondary energy" cannot be relied upon as being at all times available, but is subject to diminition or temporary exhaustion; whereas "firm energy" is the amount of energy agreed upon as being available continuously as required during each year of the contract period. In the readjustment of the rate for "secondary energy", account shall be taken of the foregoing factors."

The charges agreed to be paid by the District to the United States, for credit to the City as generating agency,

in this Article, shall be such proportion of the cost incurred by such generating agency as it and the District may agree.

The term "cost", as used with reference to generating energy, shall include a proper proportionate allowance for amortization for the cost of machinery and equipment as provided in Paragraph a of Article 9 of Exhibit A hereof, a proper proportionate part of any annuity set up in accordance with regulations of the Secretary provided for in Subdivision 3 of Article sixteen (16) of Exhibit "A" hereof, for the purpose of meeting the obligation of the City to make replacements; and a proper proportionate part of the actual outlay of the City for operating such machinery and equipment and keeping the same in repair, including reasonable overhead charges. The extent of the allowance for the several items in the event of disagreement between the City and District, and the system of accounting therefor, shall be prescribed by the Secretary under uniform regulations as required by Section 6 of the Boulder Canyon Project Act.

Monthly Payments and Penalties

(13) The District shall pay monthly for energy in accordance with the rates established or provided for herein, and for the generation thereof as provided in Article twelve (12).

When energy taken in any month is not in excess of one-twelfth (1/12) of the minimum annual obligation, bill for such month shall be computed at the rate for firm energy in effect when such energy was taken on the basis of the actual amount of energy used during such month. All energy used during any month in excess of one-twelfth (1/12) of the minimum annual obligation shall be paid

for at the rate for secondary energy in effect when such energy was taken: provided, however, that the secondary rate shall not apply to any energy taken during any month unless and until an amount of energy equivalent to one-twelfth (1/12) of the minimum annual obligation has been taken for all months beginning with the month of June immediately preceding; provided, however, that the bill for the month of May shall not be less than the difference between the minimum annual payment as provided in Article fourteen (14) hereof, and the sum of the amounts charged for firm energy during the preceding eleven months. The United States will submit bills to the District by the fifth of each month immediately following the month during which the energy is generated, and payments shall be due on the first day of the month immediately succeeding. If such charges are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum (1%) of the amount unpaid shall be added on the first day of each calendar month thereafter during such delinquency.

The monthly charge for generation of such energy to be credited to the generating agency shall be in such amount as may be determined in accordance with Article twelve (12) hereof.

Minimum Annual Payment

(14) The total payments made by the District for firm energy available in any year (June 1st to May 31st, inclusive), whether any energy is taken by it or not, exclusive of its payments for credit to the generating agency, shall be not less than the number of kilowatt hours of firm energy which the District is obligated to take

and/or pay for during said year, multiplied by one and sixty-three hundredths mills ($0.00163), or multiplied by the adjusted rate of payment for firm energy in case the said rate is adjusted as provided in Article twelve (12) hereof. For a fractional year at the beginning or end of the contract period, the minimum annual payment for firm energy shall be proportionately adjusted in the ratio that the number of days water is available for generation of energy in such fractional year bears to three hundred sixty-five (365). Provided, however, that in order to afford a reasonable time for the District to absorb the energy contracted for, the minimum annual payments by it for the first three (3) years after energy is ready for delivery to it, as announced by the Secretary, shall be as follows, in percentages of the ultimate annual obligation to take and/or pay for firm energy:

1st Year	55%
2nd Year	70%
3rd Year	85%
4th Year and all subsequent years	100%

During said absorption period, if the quantity of energy taken in any one year (June 1st to May 31st, inclusive) is in excess of the above percentages of the ultimate obligation during such year to take and/or pay for firm energy, such excess shall be paid for at the rate for secondary energy. Provided, further that the minimum annual payment shall be reduced in case of interruptions or curtailment of delivery of water as provided in Article sixteen (16) hereof.

The total payments made by the District for generation of such energy, to be credited to the generating agency,

shall be determined in accordance with Article twelve (12) hereof.

No Energy to be Delivered Without Payment

(15) Unless the written consent of the Secretary be first obtained, no electrical energy shall be generated for, or delivered to, the District if it shall be in arrears for more than twelve (12) months in the payment of any charge and/or penalty due or to become due the United States hereunder, whether for its own use or for credit to the generating agency.

Interruptions in Delivery of Water

(16) The United States will deliver water continuously to each lessee in the quantity, in the manner, and at the times necessary for the generation of the energy which each of said lessees has the right and/or obligation to generate under this contract in accordance with the load requirements of each of said lessees, and of allottees for which the respective lessees are generating agencies, excepting only that such delivery shall be regulated so as not to interfere with the necessary use of said Boulder Canyon Dam and Reservoir for river regulation, improvement of navigation, flood control, irrigation, or domestic uses, and the satisfaction of present perfected rights in or to the waters of the Colorado River, or its tributaries, in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition, and with the express covenant, that the rights of the District to the waters of the Colorado River, or its tributaries, are subject to, and controlled by, the Colorado River Compact. The United States reserves the right temporarily to discontinue or reduce the delivery of

water for the generation of energy at any time for the purpose of maintenance, repairs, and or replacements, or installation of equipment, and for investigations and inspections necessary thereto; provided, however, that the United States shall except in case of emergency give to the lessees reasonable notice in advance of such temporary discontinuance or reduction, and that the United States shall make such inspections and perform such maintenance and repair work after consultation with the lessees at such times and in such manner as will cause the least inconvenience to the lessees, and shall prosecute such work with diligence, and, without unnecessary delay, will resume delivery of water so discontinued or reduced. Should the delivery of water be discontinued or reduced below the amount required, severally, for the normal generation of firm energy for the payment of which said District has hereby obligated itself, the total number of hours of such discontinuance or reduction in any year shall be determined by taking the sum of the number of hours during which the delivery of water is totally discontinued, and the product of the number of hours during which the delivery of water is partially reduced and the percentage of said partial reduction below the actual quantity of water required by the lessees, severally, for the normal generation of firm energy. Total or partial reductions in delivery of water which do not reduce the power output below the amount required at the time by such lessee for the normal generation of firm energy, will not be considered in determining the total hours of discontinuance in any year. The minimum annual payments specified in article fourteen (14) hereof shall be reduced by the ratio that the total number of hours of such discontinuance bears to eight thousand seven hundred sixty (8760). In

no event shall any liability accrue against the United States, its officers, agents and/or employees, for any damage, direct or indirect, arising on account of drought, hostile diversion, Act of God, or of the public enemy, or other similar cause; nevertheless interruptions in delivery of water occasioned by such causes shall be governed as hereinabove provided in this article.

Measurement of Energy

(17) The energy received by the District shall be measured at transmission voltage at the point where the District's transmission lines connect to the switching station at Boulder Canyon dam called the point of delivery, or at the option of the Secretary, the energy received by the District shall be measured at the low voltage side of the substations serving the District, in which event suitable correction shall be made in the amounts of energy as measured to cover all losses between the points of measurement and the point of delivery at transmission voltage at Boulder Canyon dam. Suitable meter equipment satisfactory to the Secretary for measuring the energy received by the District shall be provided and maintained by and at the expense of the District. Meters may be tested at any reasonable time upon the request of either the United States or the District, and in all events they shall be tested at least once each year. If the test discloses that the error of any meter exceeds one per centum (1%) such meter shall be adjusted so that the error does not exceed one half of one per centum (½%). Meter equipment shall be tested by means of suitable testing equipment which will be provided by the United States, and which shall be calibrated by the United States Bureau of Standards as often as requested by either the United States or the

District. Meters shall be kept sealed, and the seal shall be broken only in the presence of representatives of both the United States and the District and likewise all tests of meter equipment shall be conducted only when representatives of both the United States and the District are present.

Inspection by the United States

(18) The Secretary or his representatives, shall at all times have the right of ingress to and egress from all works of the District for the purpose of inspection, repairs and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the District relating to the disposal of electrical energy, with the right at any time during office hours to make copies of or from the same.

Transmission

(19) (a) The City having, in Article twenty five (25) of Exhibit A hereof undertaken that it shall operate and maintain at cost, including allowance for necessary overhead expense, the lines required for transmitting all Boulder Canyon power from the power plant to the pumping plants of the District, allocated to and used by the District for pumping water into and in its aqueduct; provided, that in the event it should prove materially to the advantage of the District, at any time during the 50-year period of this lease, the District may operate and maintain such transmission lines itself; and provided further, that in the event of disagreement or dispute between the District and the City as to such matter, such disagreement shall be determined as provided in Article twenty-two (a)

(22a) hereof; the Secretary will, if by such determination energy allocated to and used by the District is to be transmitted by the District instead of the City, cause delivery of energy at transmission voltage to be made accordingly.

Duration of Contract

(20) This contract shall become effective as soon as the first Act of Congress appropriating funds for commencement of construction of Boulder Canyon Dam has become law, and as to the District shall remain in effect until the expiration of a period of fifty (50) years from the date at which energy is ready for delivery to the City, as determined by the Secretary. The holder of any contract for electrical energy, including the District, not in default thereunder, shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such contractor be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

Contract May Be Terminated in Case of Breach

(21) If the District shall be in arrears for more than twelve (12) months in the payment of any charge and/or penalty due or to become due to the United States hereunder, and shall not have obtained an extension of time for payment thereof, or, if such extension be obtained, has not made such payment within the time as extended, then the Secretary reserves the right thereafter, and upon two (2) years' written notice to the District, to terminate

this contract and dispose of the energy herein allocated as he may see fit: provided, he shall first give opportunity to each lessee to contract on equal and uniform terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other lessee shall not elect to take, and provided further, that such disposition shall be subject to the condition that the District shall have the right at any time within ten (10) years from date of the first of the defaults or breaches for which the contract is terminated, to become reinstated hereunder by payment to the United States of all arrearages and penalties, if any, together with any and all loss incurred by the United States by reason of such termination, and compensation to the contractor or contractors for equipment rendered idle by such reinstatement. In case of disagreement or dispute as to any of the items so to be paid the same shall be determined as provided in article 22 hereof. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provisions hereof, or of a subsequent breach of such provision.

Disputes and Disagreements

(22) (a) Disputes or disagreements arising under this contract between the District and any lessee or other allottee shall be arbitrated by three arbitrators, except where otherwise provided in this contract. The District shall name one arbitrator, and the other disputant shall name one. These two shall name the third. If either disputant has notified the other that arbitration is demanded and that it has named an arbitrator, and if thereafter the

other disputant fails to name an arbitrator for fifteen (15) days, the Secretary, if requested by either disputant, shall name such arbitrator, who shall proceed as though named by the disputant. The two arbitrators so named shall meet within five days after appointment of the second, and name the third. If they fail to do so, the Secretary will, on request by either disputant or arbitrator, name the third. A decision by any two of the three arbitrators shall be binding on the disputants and enforceable by court proceedings or by the Secretary in his discretion. Arbitration as herein provided, or the failure of the arbitrators to render a decision within six months of appointment of the third arbitrator, shall be a condition precedent to suit by either disputant against the other upon the matter in dispute.

(b) Disputes or disagreements between the United States and the District as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the disputants agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Use of Public and Reserved Lands of the United States

(23) The use is authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation and maintenance of main transmission lines, to transmit electrical energy generated at Boulder Canyon Dam, together with the use of such public and reserved lands of the United States as may be designated by the Secretary, from time to time, for camp sites, residences for employees, warehouses and other uses incident to the operation and maintenance of the power plant and incidental works.

Priority of Claims of the United States

(24) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Transfer of Interest in Contract

(25) No voluntary transfer of this contract, or of the rights hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the District, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the Boulder Canyon Project Act and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original contractor hereunder; provided that, a mortgage or trust deed or judicial sales made thereunder shall not be deemed voluntary transfers within the meaning of this article.

Rules and Regulations

(26) This contract is subject to such rules and regulations conforming to the Boulder Canyon Project Act

as the Secretary may from time to time promulgate; provided, however, that no right of the District hereunder shall be impaired or obligation of the District hereunder shall be extended thereby; and provided further that opportunity for hearing shall be afforded the District by the Secretary prior to promulgation thereof.

Agreement Subject to Colorado River Compact

(27) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River; and for other purposes," which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

Performance Bond

(28) The District shall, upon demand of the Secretary, furnish and keep current for the use and benefit of the United States a performance bond in a penal sum equal to the annual obligation assumed by it hereunder; or, in lieu thereof, deposit security satisfactory to the Secretary conditioned upon the faithful performance of this contract. In case security is deposited, the Secretary may make such disposition of the same as will accomplish the purpose for which submitted.

Contingent upon Appropriations

(29) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam Fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient moneys not being so appropriated or on account of there not being sufficient moneys in the Colorado River Dam Fund to permit of said allotments. This agreement is also subject to the condition that if Congress fails to appropriate moneys for the commencement of construction work within five (5) years from and after execution hereof, or if for any other reason construction of Boulder Canyon Dam is not commenced within said time and thereafter prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon one (1) year's written notice to the other party hereto.

Title to Remain in United States

(30) As provided by Section six (6) of the Boulder Canyon Project Act, the title to Boulder Canyon Dam, reservoir, plant and incidental works, shall forever remain in the United States.

Remedies under Contract not Exclusive

(31) Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

Member of Congress Clause

(32) No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written. (Executed in quadruplicate original.)

Attest:

NORTHCUTT ELY (S)

Approved as to form:

By W. B. Mathews (Signed)
General Counsel

Attest:

S. H. Finley (Signed)
Secretary of the Board of Directors

THE UNITED STATES OF AMERICA,
By RAY LYMAN WILBUR (S)
Secretary of the Interior

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
By W. P. Whitsett (Signed).
Chairman of the Board of Directors.

(Corporate Seal)

APPENDIX NO. 21

AMENDED WATER CONTRACT: UNITED STATES AND METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Sept. 28, 1931

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Supplementary Contract for Delivery of Water

1. **This Supplementary Contract**, made this 28th day of September, nineteen hundred thirty-one, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, between **The United States of America**, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and **The Metropolitan Water District of Southern California**, a public corporation, hereinafter referred to as the District, organized and existing under and by virtue of the laws of the State of California:

Witnesseth:

Explinatory Recitals

2. **Whereas**, there was executed on the 24th day of April, 1930, a contract between the **United States** and

the District, entitled "Contract for Delivery of Water," which said contract provides, among other things, for the delivery to the District each year from the Boulder Canyon Reservoir up to but not to exceed one million fifty thousand (1,050,000) acre-feet of water; and

3. **Whereas,** under date of November 5, 1930, the Secretary requested of the Chief of the Division of Water Resources of the State of California, a recommendation for the apportionment of the waters of the Colorado River available for use within the State of California, under the Colorado River Compact, the Boulder Canyon Project Act, and other applicable legislation and regulations, to the end that the same could be included as a uniform clause in each and all of the contracts under the provisions of the Boulder Canyon Project Act between the United States and applicants for water contracts in the State of California; and

4. **Whereas,** in cooperation with the District and applicants for water in the State of California, the Chief of the Division of Water Resources of the State of California made and filed his recommendations in this regard with the Secretary on August 22, 1931, and it is the desire of the partie hereto that the aforesaid contract of date April 24, 1930, be amended in certain particulars so as to conform to the recommendations of said Division of Water Resources insofar as they are set out in Article six (6) hereof;

5. **Now, Therefore,** in consideration of the mutual covenants contained herein and in the said contract of date April 24, 1930, the parties hereto agree as follows to wit:

Delivery of Water by the United States

6. That Article six (6) of the said contract of April 24, 1930, be and the same is hereby amended so as to read as follows:

"*Delivery of Water by the United States.*

(6) The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the District each year at a point in the Colorado River immediately above the District's point of diversion (at or in the vicinity of the proposed Parker Dam), so much water as may be necessary to supply the District a total quantity, including all other waters diverted by the District from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, as follows (subject to the availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act):

"The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands;

Section 2. A second priority to Yuma Project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

Section 4. A fourth priority to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum.

Section 5. A fifth priority, (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum and (b) to the City of San Diego and/or

County of San Diego, for beneficial consumptive use, 112,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 28000 of the Department of the Interior, Bureau of Reclamation.

Section 8. So far as the rights of the allottees named above are concerned, The Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre feet in the aggregate) by reason of reduced diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time

prescribe in his discretion; and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other states without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

Section 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said City and or said County (not exceeding at any one time 250,000 acre feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other states without distinction in priority, and to determine the correlative relations between the said City and/or said County and such users resulting therefrom.

Section 10. In no event shall the amounts allotted in this agreement to The Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said District and said City, and

either or both may use said apportionments as may be agreed by and between said District and said City.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

Section 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the District agrees that he may, contract with any of the allottees above named in accordance with the above stated recommendation, or, in the event that such recommendation as to Palo Verde Irrigation District is superseded by an agreement between all the above allottees or by a final judicial determination, to contract with the Palo Verde Irrigation District in accordance with such agreement or determination: provided, that priorities numbered fourth and fifth shall not thereby be disturbed.

Said water shall be delivered continuously as far as reasonable diligence will permit, but the United States shall not be obligated to deliver water to the District when for any reason such delivery would interfere with the use of Hoover Dam and Boulder Canyon Reservoir for river regulation, improvement of navigation, flood control, and/or satisfaction of

perfected rights, in or to the waters of the Colorado River, or its tributaries, in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition and with the express covenant that the right of the District to waters of the Colorado River, or its tributaries, is subject to and controlled by the Colorado River Compact. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacement or installation of equipment and or machinery at Hoover Dam, but so far as feasible the United States will give the District reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur. This contract is for permanent service, but is made subject to the express covenant and condition that in the event water for the District is not taken or diverted by the District hereunder for District purposes within a period of ten (10) years from and after completion of Hoover Dam as announced by the Secretary, it may in such event, upon the written order of the Secretary, and after hearing, become null and void and of no effect."

Contract of April 24, 1930, Effective Except as Modified

7. Except as expressly modified hereby the aforesaid contract of date April 24, 1930, shall remain in full force and effect.

Member of Congress Clause

8. No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this supplementary contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By RAY LYMAN WILBUR
Secretary of the Interior.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
By W. P. WHITSETT
Chairman of the Board
of Directors.

Attest:
NORTHCUTT ELY

Attest:
S. H. FINLEY,
Secretary of the Board of Directors

Approved as to form:
JAMES H. HOWARD,
General Counsel, The Metropolitan
Water District of Southern California

[Seal]

APPENDIX NO. 22

PARKER DAM COOPERATIVE CONTRACT: UNITED STATES AND METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Feb. 10, 1933

Boulder Canyon Project

Cooperative Contract for Construction and Operation of Parker Dam

1. This contract, made this 10th day of February, 1933, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the act of Congress approved March 4, 1921 (41 Stat. 1367, 1404), section 25 of the act of Congress approved April 21, 1904 (33 Stat. 189, 224), and the act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and the "Metropolitan Water District Act" of the Legislature of the State of California (Stats. 1927, Chap. 429), as amended, particularly section 5, subdivision (9) thereof, between **The United States of America**, hereinafter referred to as the United States, acting for that purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and **The Metropolitan Water District of Southern California**, a public corporation, hereinafter referred to as the District, organized and existing under and by virtue of the laws of the State of California:

Witnesseth:

Explanatory Recitals

2. **Whereas,** these parties have heretofore on April 24, 1930, and September 28, 1931, entered into two contracts entitled respectively "Contract for Delivery of Water," and "Supplementary Contract for Delivery of Water," which said contracts provide, among other things, for the delivery by the United States to the District each year from the Boulder Canyon Reservoir of quantities of water at a point in the Colorado River immediately above the District's point of diversion (at or in the vicinity of the proposed Parker Dam hereinafter referred to), and have also entered into two contracts (dated April 26, 1930, and May 31, 1930), for the purchase by the District from the United States of certain quantities of electrical energy to be generated at Hoover Dam, for the pumping of said water into and in an aqueduct to be constructed by the District; and

3. **Whereas,** the said point of delivery and the proposed Parker Dam are approximately ten (10) miles above the boundaries of the Colorado River Indian Reservation as designated by the act of Congress approved March 3, 1865 (13 Stat. 559), and there are now being irrigated, by pumping, approximately 6000 acres of land within said reservation, and water has been reserved and appropriated pursuant to said act as amended or supplemented and particularly by the act of April 4, 1910 (36 Stat. 273), for additional lands within said reservation susceptible of irrigation from the Colorado River, the reclamation of which will require diversion from the River by construction of a dam, or by pumping or both, and will require drainage of said lands by pumping, for all of which electrical energy is needed; and

4. **Whereas,** there are also in Arizona additional public and other lands in the vicinity of said reservation and also in the Gila Valley, susceptible of irrigation from the Colorado River, but requiring pumping for such purposes, for which electrical energy will be needed, and the United States has now under way an investigation of possible reclamation of such areas as authorized by section fifteen (15) of the said Boulder Canyon Project Act; and

5. **Whereas,** the reclamation of said Indian and public and other lands will be rendered more feasible by the availability of stored water and electrical energy at the proposed Parker Dam, and the floods of the tributaries of the Colorado River between Hoover Dam and Parker Dam will be controlled, and navigation improved, by said dam; and

6. **Whereas,** the Secretary is authorized by said act of April 21, 1904 (33 Stat. 224), to build the proposed Parker Dam for the reclamation of all or any portion of the irrigable lands on the Yuma and Colorado River Indian Reservations in California and Arizona; and such authority has been reserved in the Arizona Enabling Act (act of June 20, 1910, 36 Stat. 570, 575), and

7. **Whereas,** the District is engaged in a project involving the construction of an aqueduct for the purpose of diverting and conveying water from the Colorado River to the metropolitan area of Southern California for domestic, municipal and other useful purposes, and as a means of such diversion, desires storage in the main stream of the Colorado River at the site of the proposed Parker Dam, for the purpose, among others, of desilting water, reducing pump lift and developing incidental electrical energy for pumping water into and in said aqueduct

and other uses subordinate to the said aqueduct project, and the District desires to utilize the proposed Parker Dam in common with the United States and is willing to pay to the United States the entire capital cost of construction of said dam, as hereinafter set forth, and is further willing that one-half of the power privilege created by said dam shall be reserved to the United States for the purposes of irrigation and drainage of lands in Arizona within the Colorado River Indian Reservation, as now constituted, and the Gila or Gila-Parker Project without contribution by the United States to the capital cost of the proposed dam, as hereinafter set forth, and is also willing that the dam be utilized by the United States for the storage and diversion of water for the requirements of Indian, public and other lands in Arizona; and

8. **Whereas,** the Secretary is authorized by the act of Congress approved March 4, 1921, to receive moneys from the District as aforesaid and to effect therewith the construction of the proposed works as though said moneys were specifically appropriated for said purposes; and

9. **Whereas,** funds are not otherwise available for the construction by the United States of said dam and the provision of storage and diversion facilities and of appurtenant works for the irrigation and drainage of said Indian, public and other lands in Arizona and the cooperative construction of the said dam and works, as herein provided, will be mutually advantageous to the parties hereto, and the cost of said dam and appurtenant works will be materially less if constructed during the period of completion of the Hoover Dam now under construction than would otherwise be the case;

Now, Therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to-wit:

Construction by the United States

10. The United States will, with funds advanced by the District as hereinafter provided, and for the purposes stated in this contract, construct in the main stream of the Colorado River at a point in the vicinity of Parker, Arizona, shown on the map attached hereto and described herein as Exhibit "A", a dam, referred to herein as the Parker Dam, creating thereby a storage reservoir having a maximum water surface elevation of approximately four hundred fifty (450) feet above sea level (U. S. Geological Survey datum). Upon like conditions the United States will also construct outlet works, pressure tunnels, penstocks and other appurtenant structures to the extent that such structures may be necessary and/or economically desirable as parts of the original installation, and such facilities for navigation as the Secretary may find necessary. All buildings intended solely for the use of either party hereto shall be constructed at the sole expense of the party for whom such facilities shall be provided. The dam and appurtenant structures shall be so constructed that subsequent installation of diversion or outlet works shall be possible in the most feasible manner for canal connections with lands within the Colorado River Indian Reservation and with public and other lands in Arizona now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and, if either party hereto requires it, so that one-half of the total installed capacity of electrical generating equipment may be located upon the Arizona side of the river and

one-half on the California side. Outlet works, pressure tunnels, penstocks, connections for canals and appurtenant structures not required by the District shall be completed under this contract only to the extent necessary to permit their subsequent completion and use without risk of damage to the remainder of the work.

In carrying out the proposed work hereunder and in acquiring supplies, materials and equipment therefor, the United States may proceed directly under the method commonly referred to as force account, or may proceed by construction contract. In the event that such contract or contracts shall be let with reference to the construction of said dam, or the acquisition of supplies, materials or equipment therefor, the letting of such contracts shall be governed by the provisions of Section 3709, United States Revised Statutes.

Funds to Be Provided by the District

11. The District will advance to the United States, not to exceed the sum of Thirteen Million Dollars ($13,000,000), or so much thereof as may be (a) the cost of preparation of plans and specifications described in Article 13 hereof; (b) the actual cost of the said dam, including acquisition of lands and rights of way for reservoir and other incidental purposes, outlet works, pressure tunnels and penstocks, to be constructed hereunder, and of the District's proportionate share as determined by the Secretary, of such power plant buildings and generating, transforming and high voltage switching equipment as may be installed for the joint use of the United States and the District, and (c) required to meet any overhead and general expense incurred by the United States in carrying out this contract.

Said funds will be furnished to the United States by payment from time to time to the Secretary or such fiscal agent as he may designate in advance of expenditure thereof by the United States. The Secretary will submit estimates of the monthly anticipated expenditures not less than sixty (60) days in advance, and the District will then advance the amount not less than thirty (30) days prior to the month in which such funds shall be estimated to be required. If the United States effects such construction by contract, such contract shall recite that the United States shall not be liable for any loss occasioned by the failure of the District to advance funds as herein provided. The District agrees to hold the United States harmless from all claims whatsoever arising from any such failure. If the funds provided by the District are at any time insufficient, the United States will stop work (if proceeding under force account), when the funds so advanced are exhausted, or give notice to the construction contractor to stop work (if proceeding by construction contract), when the funds so provided are about to be exhausted, and will not resume or give notice to resume work until additional and sufficient funds are provided by the District; and, in any event, the United States shall not be obligated by this agreement beyond the expenditure of the amount actually provided by the District, whether the proposed works are completed or not. The failure of the District to provide funds shall not impose any liability on the District other than to hold the United States harmless from the consequences thereof, but the United States may be relieved, at its option, of any obligation under this contract, if such failure continues for twelve (12) successive months, after submission of estimate therefor.

by the Secretary's giving the District written notice of the termination of any further obligation of the United States hereunder.

The cost of the proposed works shall embrace all expense of whatever kind, growing out of or resulting from said works, including any overhead and general expense (as conclusively estimated by the Secretary) incurred by the United States in carrying out this contract. Nothing contained in this article is to be construed as obligating the United States to expend or Congress to appropriate money for any share of (a) said power plant buildings or (b) said generating, transforming and high voltage switching equipment intended for the joint use of the parties hereto.

No Obligation by the United States to Pay for Works Constructed

12. The United States shall not be under any obligation to repay to the District, or otherwise contribute toward, the cost of any works built with funds provided by the District.

Preparation of Plans and Specifications

13. The designs and specifications for all construction or other work under this contract (including exploratory and preparatory work) shall be prepared by the United States with the cooperation of and at the cost of the District, and shall be approved in writing by the General Manager and Chief Engineer of the District, or such other officer as the Directors thereof may designate, prior to performance thereof or the letting of contracts for such work.

Duration of Contract

14. Upon written notice from the District to the Secretary that funds will be available to carry out the work to be constructed hereunder, the United States agrees to submit within thirty (30) days following such notice its first estimate of funds required during the first thirty (30) days of work hereunder and to proceed thereafter with reasonable diligence. It is contemplated that as far as practicable, the proposed works shall be constructed coincidentally with the construction of Hoover Dam and the filling of the reservoir thereby created and that any contract let by the United States for the erection of Parker Dam shall so provide; but neither the United States nor the District shall incur liability to the other through the non-completion of said works within said period. This contract shall terminate on December 31, 1945, unless prior thereto the District shall have advanced sufficient funds for all works to be constructed by the United States hereunder, and in the event of such termination, all rights of the District under this contract shall cease, and the uncompleted works, together with the rights to the use thereof, shall vest in the United States.

POWER AND OTHER PRIVILEGES

15. (I) The interest of both parties require and it is agreed that the water surface of the reservoir to be created by Parker Dam shall be maintained as nearly as possible at a level of 450 feet above sea level (U. S. Geological Survey datum) at the dam.

II. It is agreed that the United States shall have and may exercise the following rights and such incidental authority as may be necessary to make them effective:

(a) The right to control all water passing the dam; provided, however, that the water level stated in Article 15 (1) hereof shall not be arbitrarily reduced but may be temporarily reduced from time to time to a minimum elevation of 440 feet above sea level, and the water level shall not be reduced below said minimum level except in cases of emergency affecting the safety of the said dam and appurtenant works.

(b) The right, without contribution to the cost of the dam built under this contract, to one-half the power privilege created thereby for use in the irrigation and drainage of lands in Arizona within the Colorado River Indian Reservation as now constituted and the Gila or Parker-Gila Project, as determined by the Secretary and for other purposes incidental to said Colorado River Indian Reservation and Gila or Parker-Gila Project; that is to say, the right to pass through such generating equipment as it may install, one-half, the total available flow at the dam at any given time, after deductions for diversions being made above the dam for the District's aqueduct and for the irrigation of (1) the Colorado River Indian Reservation, as now constituted, and (2) public and other lands in Arizona, now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to so utilize such portion of the balance of the power privilege as aforesaid as may not be used by the District for the time being.

(c) The right to connect with such transmission system as the District may construct for the purpose of utilizing any power transmission capacity in excess of the District's requirements; for the transmission of power from Hoover

Dam to Parker Dam for general use within the Colorado River Indian Reservation, as now constituted, and Gila or Parker-Gila Project, as determined by the Secretary; provided that such excess capacity shall be subject to reasonable operating conditions fixed by the District, and that the United States shall pay to the District the cost of transmission of such power as may be transmitted by use of such excess capacity hereunder;

(d) The right to connect with the Parker Dam and/or the reservoir created thereby by means of a canal (including such outlet and diversion features at Parker Dam as may be necessary or advisable) with lands within the Colorado River Indian Reservation, as now constituted, and with public and other lands in Arizona or California, now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to thereby divert such quantities of water as may be consistent with the Colorado River Compact and the Boulder Canyon Project Act.

III. It is agreed that the District shall have and may exercise the following rights and such incidental authority as may be necessary to make them effective:

(a) The right to one-half of the power privilege created by the proposed Parker Dam for the purpose of developing electrical energy for pumping water into and in the said aqueduct and other uses incidental to said aqueduct project in California; that is to say, the right to pass through such generating equipment as it may install, one-half the total available flow at the dam at any given time, after deductions for diversions being made above the dam for the District's aqueduct and for the irrigation of

(1) the Colorado River Indian Reservation, as now constituted, and (2) public and other lands in Arizona, now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to utilize for said purpose such portion of the balance of the power privilege as aforesaid as may not be used by the United States for the time being.

(b) The right to divert water from the said Parker Dam and/or the reservoir created thereby, by means of an aqueduct, canal or other appropriate works (including such outlet and diversion features at Parker Dam as may be necessary or advisable) for domestic, municipal and other beneficial use within the area of the District, as now or hereafter constituted, in California, and to thereby divert such quantities of water as may be consistent with the Boulder Canyon Project Act, the Colorado River Compact and the said contracts heretofore entered into between the United States and the District and described and referred to in Article 2 hereof.

Installation of Machinery

16. Machinery and equipment for generating, transforming, and high voltage switching of energy for the sole use of the District shall be installed, owned and operated by the District at its own expense. The District shall not be liable for the cost of generating or other electrical equipment installed for the sole use of the United States.

Operation and Maintenance of Reservoir, Dam and Outlet Works

17. The United States will operate and maintain the reservoir, dam and outlet works, to, but not including shut-off valves, and reserves the right to direct the control of all water passing the dam for any and all purposes; provided that contracts now in force between the parties hereto shall not be thereby impaired. So long as the United States shall make no use of the reservoir, the cost of operation and maintenance (which shall include repairs and replacements and a reasonable amount, as determined by the Secretary, for general expenses and overhead, but excluding contingent liabilities and/or damages) shall be paid monthly in advance by the District to the United States within sixty (60) days of submission of estimates therefor. If and when the United States shall use or authorize the use of said reservoir for diversion of water and/or development of power, the annual cost of maintenance and operation of the reservoir and dam (as hereinabove in this paragraph limited and defined) shall be pro-rated upon the basis of the diversions by each party into their respective aqueducts, canals and power plants, and shall be paid in direct proportion to the uses so made by the District and the United States.

Operation and Maintenance of Power Plant and Power Plant Buildings

18. The District will operate and maintain at its own cost all buildings and equipment used solely by it for the generation of electrical energy, from and including shut-off valves. The United States will operate and maintain at its own cost all buildings and equipment used solely by

the United States for the generation of electrical energy, subject to the availability of appropriations therefor by Congress, and said operation and maintenance shall be effected by the United States through such agency as the Secretary shall designate.

Title

19. Title to the dam and all other structures erected by the United States, whether utilized by it or by the District, or by both, shall remain in the United States.

United States to Be Held Harmless

20. The District agrees to save the United States, its officers, agents and employees harmless from all claims whatsoever arising out of the construction and maintenance of said dam, and from all claims whatsoever arising out of such operation thereof as may be necessitated by the requirements of the District. The District agrees to pay all damages resulting from the flooding of lands, and, to the extent that lands within the Chimehuevi Indian Reservation are damaged, payment therefor will be made to the United States for the benefit of said Reservation.

Access to Work and to Books and Records

21. Accredited officers of the District shall have the right of ingress to and egress from all work done under this contract, both in progress and after completion, and the right at all reasonable hours to examine and make copies of any books, records, drawings or specifications thereof; and the United States shall have a like right as to all pertinent books, records, drawings and specifications of the District. Upon demand and at not less than

thirty day intervals, the United States will furnish to the District detailed statement of all costs and expenditures in connection with and/or chargeable against the proposed Parker Dam Project.

Existing Contracts Between the United States and the District Not Affected

22. Existing contracts between the United States and the District shall remain in full force and effect and unaltered by the provisions of this agreement.

Transfer of Interest in Contract

23. No voluntary transfer of this contract, or of the rights hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the District, whether by voluntary transfer, or otherwise, shall be subject to all the conditions of the Reclamation Law and supplementary legislation, and also subject to all the provisions and conditions of this contract, to the same extent as though such successor or assign were the original contractor hereunder.

Rules and Regulations

24. This contract is subject to such rules and regulations, conforming to the Reclamation Law and supplementary legislation and other statutes cited in this contract, as the Secretary may from time to time promulgate: *provided*, however, that no right of the District hereunder shall be impaired or obligation of the District hereunder shall be extended thereby; and *provided further*, that opportunity for hearing shall be afforded the District by the Secretary prior to promulgation or modification of any such rules and regulations.

Agreement Subject to Colorado River Compact

25. This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the Act of Congress approved August 19, 1921 (42 Stat. 171), entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

Disputes and Disagreements

26. Whenever a controversy arises out of this contract, and if the disputants then agree to submit the matter to arbitration, the District shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Member of Congress Clause

27. No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part

of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA
By RAY LYMAN WILBUR
Secretary of the Interior

Attest:
NORTHCUTT ELY

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA,
By W. P. WHITSETT,
Chairman of the Board of Directors

Approved as to Form
By JAMES H. HOWARD
General Counsel

Attest:
[Seal]
S. H. FINLEY
Secretary of the Board of Directors

APPENDIX NO. 23

WATER DELIVERY CONTRACT: UNITED STATES and SAN DIEGO

February 15, 1933

(1) **This contract,** made this 15th day of February nineteen hundred thirty-three, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and THE CITY OF SAN DIEGO, a municipal corporation of the State of California, hereinafter styled the City, organized under a freeholders' charter:

Witnesseth:

Explanatory Recitals

(2) **Whereas,** for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water, and a main

canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam with the Imperial and Coachella Valleys in California; and

(3) **Whereas,** the United States contemplates entering into an agreement with Imperial Irrigation District, an irrigation district organized and existing under and by virtue of the laws of the State of California, providing, among other things, for the construction of a main canal and appurtenant structures, authorized as aforesaid, and reserving under conditions to be therein stated, the right to increase the capacity of said works and to contract for such increased capacity with other agencies for the delivery of water for use within the United States; and

(4) **Whereas,** the United States and the City contemplate hereafter entering into a contract by which provision will be made for increasing, for the City's benefit and at its cost, the capacity of the main canal and appurtenant works to be constructed for Imperial Irrigation District, as aforesaid; and

(5) **Whereas,** the City is desirous of entering into a contract for the delivery to it of water from Boulder Canyon Reservoir;

(6) **Now, therefore,** in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by United States

(7) The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the City each year at a point in the Colorado River immediately above Imperial Dam, so much water as may be necessary

to supply the City a total quantity, including all other waters diverted by the City from the Colorado River, in the amounts and with priorities in accordance with the recommendation of the Chief of the Division of Water Resources of the State of California, as follows (subject to the availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act):

The waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said District as it now exists and upon lands between said District and the Colorado River, aggregating (within and without said District) a gross area of 104,500 acres, such waters as may be required by said lands.

Section 2. A second priority to Yuma Project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adja-

cent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

Section 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum.

Section 5. A fifth priority, (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial

consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation.

Section 8. So far as the rights of the allottees named above are concerned, The Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said District and/or said City (not exceeding at any one time 4,750,000 acre feet in the aggregate) by reason of reduced diversions by said District and/or said City; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said District and/or said City and such users resulting therefrom.

Section 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the

exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said City and/or said County (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said City and/or said County; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said City and/or said County and such users resulting therefrom.

Section 10. In no event shall the amounts allotted in this agreement to The Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said District and said City, and either or both may use said apportionments as may be agreed by and between said District and said City.

Section 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

Section 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of

water contracts executed by the Secretary of the Interior with the various parties.

The Secretary reserves the right to, and the District agrees that he may, contract with any of the allottees above named in accordance with the above stated recommendation, or, in the event that such recommendation as to Palo Verde Irrigation District is superseded by an agreement between all the above allottees or by a final judicial determination, to contract with the Palo Verde Irrigation District in accordance with such agreement or determination; provided, that priorities numbered fourth and fifth shall not thereby be disturbed.

Said water shall be delivered continuously as far as reasonable diligence will permit, but the United States shall not be obligated to deliver water to the City when for any reason such delivery would interfere with the use of Hoover Dam and Boulder Canyon Reservoir for river regulation improvement of navigation, flood control, and or satisfaction of perfected rights, in or to the waters of the Colorado River, or its tributaries, in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition and with the express covenant that the right of the City to waters of the Colorado River, or its tributaries, is subject to and controlled by the Colorado River Compact. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacements or installation of equipment and/or machinery at Hoover Dam, but so far as feasible the United States will give the City reasonable notice in advance of such tem-

porary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur.

Deliveries hereunder shall be in satisfaction of the allocation to the City and the County of San Diego, and shall be used within the County as the City and the County may agree, or as the State of California may allocate in the event of disagreement between the City and the County.

This contract is for permanent service, but is made subject to the express covenant and condition that in event water is not taken or diverted by the City hereunder within a period of ten (10) years from and after completion of Hoover Dam as announced by the Secretary, it may in such event, upon the written order of the Secretary, and after hearing, become null and void and of no effect.

Receipt of Water by City

(8) The City shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery above stated, and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

Measurement of Water.

(9) The water to be delievered hereunder shall be measured by such measuring and controlling devices or such automatic gauges or both, as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gauges, shall be furnished, installed and maintained by and at the expense of the City, but they shall be

and remain at all times under the complete control of the United States, whose authorized representatives may at all times have access to them over the lands and rights-of-way of the City.

Record of Water Diverted

(10) The City shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River. Such reports shall be made by the fifth day of the month immediately succeeding the month in which the water is diverted, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

Charge for Delivery of Water

(11) A charge of twenty-five cents (0.25) per acre-foot shall be made for water delivered to the City hereunder during the Hoover Dam cost repayment period.

Monthly Payments and Penalties

(12) The City shall pay monthly for all water delivered to it hereunder, or diverted by it from the Colorado River, in accordance with the rate herein in Article eleven (11) established. Payments shall be due on the first of the second month immediately succeeding the month in which water is delivered and/or diverted. If such charges are not paid when due, a penalty of one per centum (1%) of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum (1%) of the amount unpaid shall be added on the first day of each calendar month during such delinquency.

Refusal of Water in Case of Default.

(13) The United States reserves the right to refuse to deliver water to the City in the event of default for a period of more than twelve (12) months in any payment due or to become due the United States under this contract.

Inspection by the United States

(14) The Secretary or his representatives, shall at all times have the right of ingress to and egress from all works of the City for the purpose of inspection, repairs and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the City relating to the diversion and distribution of water delivered to it hereunder with the right at any time during office hours to make copies of or from the same.

Disputes or Disagreements

(15) Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to submit the matter to arbitration, the City shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the Senior Judge of the United

States Circuit Court of Appeals for the ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Rules and Regulations

(16) There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the City and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments hereof, or to protect the interests of the United States. The City hereby agrees that in the operation and maintenance of its diversion works and aqueduct, all such rules and regulations will be fully adhered to.

Agreement Subject to Colorado River Compact

(17) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

Priority of Claims of the United States

(18) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contingent upon Appropriations

(19) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein, and to there being sufficient moneys available in the Colorado River Dam Fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam Fund to permit of said allotments. This agreement is also subject to the condition that if for any reason construction of Hoover Dam is not prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon one (1) year's written notice to the other party hereto.

Rights Reserved under Section 3737 Revised Statutes

(20) All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies under Contract not Exclusive

(21) Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

Interest in Contract not Transferable

(22) No interest in this agreement is transferable, and no sublease shall be made, by the City without the written consent of the Secretary, and any such attempted transfer or sublease shall cause this contract to become subject to annulment, at the option of the United States.

Member of Congress Clause

(23) No Member of or Delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In Witness Whereof, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA.
By RAY LYMAN WILBUR
Secretary of the Interior.

THE CITY OF SAN DIEGO.
By JOHN HOWARD, JR.
Mayor.

Attest:
NORTHCUTT ELY
RICHARD J. COFFEY

Approved as to form
C. L. BYERS
City Attorney

Attest:
ALLEN W. WRIGHT
City Clerk

As evidence of its approval of the foregoing contract between the United States and the City, the County of San Diego has caused the signature of the Chairman of its Board of Supervisors to be affixed thereto.

THE BOARD OF SUPERVISORS OF
SAN DIEGO COUNTY
By TOM HURLEY
Chairman.

Attest:
J. B. McLEES
County Clerk

Approved as to form: Feb 7 1933
RAY LYMAN WILBUR
Ray Lyman Wilbur, Secretary of the Interior.

APPENDIX NO. 24

MERGER OF SAN DIEGO WATER DELIVERY CONTRACT WITH THAT OF METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 4, 1946

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOULDER CANYON PROJECT
Arizona-California-Nevada

Contract Merging Rights of The City of San Diego and The Metropolitan Water District of Southern California Under Contracts with the United States Dated February 15, 1933, and April 24, 1930 (Amended September 28, 1931), Respectively

1. **This Contract**, made this 4th day of October, 1946, pursuant to the Act of Congress, approved June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, all of which Acts are commonly known and referred to as the Reclamation Law and particularly pursuant to the Act of Congress, approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, between **The United States of America** (hereinafter referred to as the "United States"), acting for this purpose by Warner W. Gardner, Acting Secretary of the Interior (hereinafter referred to as the "Secretary"), **The City of San Diego**, a municipal corporation (hereinafter referred to as "San Diego"), the **San Diego County Water Authority**, a municipal corporation (hereinafter referred to as the "Authority"), and

The Metropolitan Water District of Southern California, a public corporation (hereinafter referred to as the "District"); **Witnesseth That:**

2. **Whereas**, under date of August 18, 1931, the Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, City of Los Angeles, The City of San Diego and County of San Diego entered into an agreement fixing their respective priorities in waters of the Colorado River available for use in California under the Colorado River Compact and the Boulder Canyon Project Act, which said contract is hereinafter referred to as the "Seven-Party Priority Agreement"; and

3. **Whereas**, under date of April 24, 1930, the United States and the District entered into a water delivery contract, which contract, as amended by supplementary contract between said parties dated September 28, 1931, provides for delivery by the United States to the District of waters of the Colorado River in accordance with said schedule of priorities as fixed in the Seven-Party Priority Agreement; said Contract, as amended by said Supplementary contract of September 28, 1931, being herein referred to as the "District's Water Delivery Contract"; and

4. **Whereas**, under date of February 15, 1933, the United States and San Diego entered into a water delivery contract approved by the County of San Diego, which contract provides for the delivery by the United States to San Diego of waters of the Colorado River, in accordance with said schedule of priorities as fixed in the Seven-Party Priority Agreement, said contract being for the benefit of San Diego and the County of San Diego,

and being hereinafter referred to as the "San Diego Water Delivery Contract"; and

5. **Whereas,** the priorities so agreed upon, and set out in said Seven-Party Priority Agreement and said water delivery contracts, are as follows, to-wit:

"Section 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said district as it now exists and upon lands between said district and the Colorado River, aggregating (within and without said district) a gross area of 104,500 acres, such waters as may be required by said lands.

Section 2. A second priority to Yuma Project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

Section 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

Section 4. A fourth priority to The Metropolitan

Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum.

Section 5. A fifth priority (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum and (b) to The City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7. A seventh priority of all remaining water available for use within California for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of the Interior, Bureau of Reclamation;"

and

6. **Whereas,** the Authority was created pursuant to the provisions of the "County Water Authority Act" of the State of California (Stats. 1943, p. 2090) and includes the corporate area of San Diego, together with other portions of the County of San Diego, and was created to the end that San Diego and other parts of the said county may participate in the benefit of Colorado River water as contemplated by the terms of said contract between the United States and San Diego, dated February 15, 1933; and

7. **Whereas,** it is provided in the said County Water Authority Act that each public agency whose corporate area shall be a part of the Authority (San Diego, by definition, being considered a public agency for the purposes of said Act) shall have a preferential right to purchase from the Authority a percentage of the water supply of the Authority, determined as therein set out; and

8. **Whereas,** the act under which the District was incorporated provides that each city whose corporate area shall be a part thereof (the Authority, by definition, being considered a city for the purposes of said act) shall have a preferential right to purchase from the District a percentage of the water supply of the District, determined as therein set out; and

9. **Whereas,** it is proposed to submit to the electors of the Authority the proposition of annexing the corporate area of the Authority to the District, and, in the event that such corporate area of the Authority shall be so annexed to and become a part of the District, it would be against the public interest that any part of the enlarged District should participate in the water supply administered by the District, in any manner or under any sched-

ule of priority differing from that generally applicable in other parts of the District, and the public interest will be best served, in the event of such annexation, by merging the contract rights and certain priorities as herein provided, and, so far as the parties hereto are concerned, treating such priorities as a single priority, to be vested in, and administered by, the District; and

10. **Whereas,** in the event of annexation of the corporate area of the Authority to the District, under the terms of the Metropolitan Water District Act, the Authority will have a right in the aggregate water supply of the District, and San Diego, whose corporate area is a part of the Authority, under the terms of the County Water Authority Act, will have a right in the water available to the Authority; and

11. **Whereas,** the right to participate in the use of the waters of the Colorado River, which San Diego will enjoy by reason of its corporate area being a part of the Authority and the corporate area of the Authority being a part of the District, will be of great value to San Diego, and the interests of San Diego will be protected and advanced by the execution of this contract;

Now, Therefore, in consideration of the premises, it is agreed that:

12. Under the conditions set out in Article 14 hereof and not otherwise, the right to storage and delivery of Colorado River water now vested in San Diego for the benefit of San Diego and the County of San Diego and evidenced by said San Diego Water Delivery Contract, shall be and is hereby assigned and transferred to and vested in the District and shall be and is hereby merged with and added to the rights of the District under the

District's Water Delivery Contract, and the rights and obligations now vested in and imposed on San Diego as evidenced by said San Diego Water Delivery Contract shall be and are hereby accepted and assumed by said District and such rights and obligations shall be administered and observed by the District and considered a part of the water supply and a part of the rights and obligations of the District for all purposes and particularly for the purposes of Section 5½ of the Metropolitan Water District Act, without reference to priority as between the Authority and any other part or parts of the District, provided that as between the District (including the Authority) and the United States and other parties to the Seven-Party Priority Agreement, nothing herein shall be construed as increasing the amount of water available to the District and/or the Authority under the fourth priority set out in the recitals hereof, or otherwise prejudicing the respective rights of other parties to the Seven-Party Priority Agreement in the water of the Colorado River. The point of delivery of all water delivered to the District under its outstanding water delivery contract and hereunder, shall be at the District's intake above Parker Dam and the United States hereby agrees that the diversion point of water heretofore agreed to be delivered to San Diego under said water delivery contract of February 15, 1933, is hereby transferred from the point on the Colorado River immediately above the Imperial Dam to the District's intake at a point on the Colorado River immediately above Parker Dam.

13. In the event that the corporate area of the Authority shall at any time cease to be a part of the District, the said contract between the United States and San Diego dated February 15, 1933, shall be revived and re-

instated, and shall thereupon become severally operative; provided, that the right of the Secretary to cancel such contract for the nonuse of water thereunder, shall not be exercised within ten years from the date when the corporate area of the Authority shall cease to be a part of the District.

14. This contract shall be of no force or effect until and unless:

(a) The corporate area of the Authority is annexed to the corporate area of the District prior to December 31, 1946, and at a time when the corporate area of San Diego is a part of the corporate area of the Authority;

(b) A majority of the qualified electors of San Diego voting on the proposition shall authorize the transfer and assignment to the District by San Diego of San Diego's rights and obligations under the Water Delivery Contract between the United States and the City of San Diego dated February 15, 1933, relating to the waters of the Colorado River;

(c) A majority of the qualified electors of San Diego voting on the proposition shall authorize the transfer and assignment to the Authority of San Diego's rights and obligations under the contract dated October 17, 1945 (NOy-13300), granting San Diego a lease of the aqueduct being constructed by the United States Navy from San Jacinto Tunnel to San Vicente Reservoir, except San Diego's obligations under Article 2 (a) of said contract to construct a water treatment plant and other works as contemplated by the San Diego bond issue approved April 17, 1945, and the obligation under Article 2 (c)

of said contract that San Diego supply all Government agencies within the area with an adequate supply of water at nondiscriminatory rates, and on condition that if the Authority shall cease to be a portion of the corporate area of The Metropolitan Water District of Southern California, the said Lease-Contract shall revert to San Diego, subject to all modifications, defaults or acts of the Authority, affecting the said Lease Contract;

(d) A majority of the qualified electors of the Authority voting on the proposition shall authorize the acceptance of the rights and the assumption by the Authority of the obligations transferred to the Authority by the assignment of the contract dated October 17, 1945 (NOy-13300).

15. This contract is made upon the express condition, and with the express understanding, that all rights hereunder shall be subject to and controlled by, the Colorado River Compact, being the Compact signed at Santa Fe, New Mexico, November 24, 1922, which compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

16. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

17. Except as expressly modified by the terms hereof, outstanding contracts between the United States and the respective parties hereto shall remain in full force and effect.

18. This contract shall be known as the "1946 Merger Contract".

In Witness Whereof, the parties hereto have executed this contract the day and year first above written.

THE UNITED STATES OF AMERICA,
By WARNER W. GARDNER
Acting Secretary of the Interior

THE CITY OF SAN DIEGO,
By F. A. RHODES
City Manager

[Seal]
Attest:
FRED W. DICK
City Clerk

SAN DIEGO COUNTY WATER AUTHORITY,
By J. L. BURKHOLDER
General Manager

[Seal]
Attest:
W. H. JENNINGS
Secretary

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
By JULIAN HINDS
General Manager and Chief Engineer

[Seal]
Attest:
A. L. GRAIN
Executive Secretary
Approved as to Form:
JAMES H. HOWARD
General Counsel

As evidence of its approval of the foregoing contract between the United States, The City of San Diego, the San Diego County Water Authority and The Metropolitan Water District of Southern California, the County of San Diego has caused the signature of the Chairman of Its Board of Supervisors to be affixed thereto.

BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO,
By DAN ROSSI
Chairman pro tem

[Seal]

Attest:
J. B. McLEES
County Clerk
By M. NASLAND, Deputy

I Hereby Approve the form and legality of the within 1946 **Merger Contract**, this 9th day of October, 1946.

J. F. DUPAUL,
J. F. DuPaul,
City Attorney, The City of San Diego.

APPENDIX NO. 25

AQUEDUCT CONSTRUCTION CONTRACT: UNITED STATES AND CITY OF SAN DIEGO

October 17, 1945

This Negotiated Contract made this 17th day of October, 1945, between the **United States of America** (hereinafter called the "Government"), represented by the **Chief of the Bureau of Yards and Docks, Navy Department** (hereinafter called the "Contracting Officer") and the **City of San Diego** (hereinafter called the "City"), a municipal corporation organized and existing under and by virtue of the laws of the State of California,

Witnesseth:

Whereas, it is recognized that the deficiency of the water supply in San Diego County, California, has become of emergency importance to the Government, owing to the large Naval, other military, Federal housing, and other Government installations in the area; and

Whereas, as a result of extended studies by the interested parties a joint program has been formulated as hereinafter provided which it is anticipated will effectively eliminate such water supply deficiency; and

Whereas, the Contracting Officer has determined that the accomplishment of the provisions of this contract, including the furnishing by the Government of extensive facilities on the terms provided, is necessary in the interest of the national defense;

Now, Therefore, it is mutually agreed as follows:

ARTICLE 1—FACILITIES TO BE FURNISHED BY GOVERNMENT AND LEASE THEREOF.

(a) The Government, at its own expense, shall diligently prosecute to completion a steel and concrete Aqueduct running from a connection with the Colorado River aqueduct of the Metropolitan Water District of Southern California near the west portal of San Jacinto tunnel in Riverside County, to San Vicente Reservoir, in San Diego County, which undertaken project is hereinafter referred to in its entirety as the "Aqueduct," and includes the entire structure and appurtenances thereto together with those rights in real property acquired by the Government for its construction or operation. The Aqueduct shall be constructed in accordance with the presently existing Government specifications therefor (such specifications being generally identified as Bureau of Yards and Docks Specifications numbered 16713, 16781, 17270, 16954, 17383, 16998, 16254, and likewise the specifications contained in Bureau of Supplies and Accounts Contract N5sy 3213, and also including such additional specifications as the Contracting Officer may deem desirable for the completion of the work), which specifications are by this reference made a part hereof. The Government may make such changes in such specifications as it may deem proper, provided, however, that no fundamental changes therein will be made without first consulting with the City. The estimated cost of the Aqueduct is $14,500,000 and the estimated completion date is May, 1947, but neither party guarantees such amount or date nor sponsors either of them as a material representation hereunder.

(b) Upon completion of the Aqueduct as determined by the Contracting Officer, the Government shall deliver the possession thereof to the City for use in its water system and upon the following lease basis:

(i) After the date of delivery of possession to it the City shall thereafter repair, maintain and operate such Aqueduct and shall be responsible for the safekeeping thereof regardless of the cause of loss or damage thereto and for all charges and assessments of whatsoever type or nature thereafter accruing against the same, it being intended that after the date of such delivery of possession under this lease the Government shall be without financial obligation or liability with respect to such property and that such property shall be maintained intact and free of encumbrance. The City shall hold the Government, its officers, agents and employees, harmless from any claims or liabilities arising out of the City's operations or other activities under this lease and shall not permit of the attachment of any encumbrance whatsoever to such Government property. The Government shall have access to the premises leased hereunder at all reasonable times for inspection or other proper purposes. Should the City fail in any of its undertakings under this paragraph, the Government, at its option and without prejudice to such other rights as it may have, may enter the premises and remedy such default or any part thereof and charge the actual cost thereof to the City plus 15% to cover overhead and general expense, which total amount together with interest at the rate of 4% per annum from the date of expenditure to the date of payment shall be paid to the Government

by the City on June 1 immediately succeeding the date when the Government completes or discontinues the remedying of such default or part thereof.

(ii) Title to the Aqueduct shall remain in, and title to all replacements and improvements thereto made during the life of this lease shall vest in, the Government.

(iii) The annual rental under this lease shall be $500,000. The lease period shall commence to run from the date the Government delivers possession of the Aqueduct to the City. Such annual payment shall be divided into quarterly payments of $125,000 each, the first of such payments to be made within three months of said date of delivery of the Aqueduct and the remainder quarterly thereafter.

(iv) This lease shall continue until such time as the City has paid to the Government in rentals the full amount of the true cost to the Government, as defined in Article 3, of the Aqueduct. During the term of this lease the City shall have the right and option to purchase said Aqueduct from the Government upon the terms and conditions contained in either of the following subparagraphs (1) and (2), the option in each being deemed independent of the option in the other:

(1) At intervals of five years the City may in writing request the Contracting Officer to name and fix a purchase price of said Aqueduct, and thereafter the City may purchase said Aqueduct for the price so named, and thus terminate the lease; provided that if the City is unable to pay the price so fixed out of the annual

revenues of said City for the year in which said option is exercised, then said purchase by said City must be first authorized by a vote of two-thirds of the qualified electors of said City voting at an election held for that purpose. The ratification of said purchase shall be authorized by said electors within one year following the notice by said City that it desires to exercise the option. This right or option on the part of the City to purchase said Aqueduct shall inure to the benefit of any assignee of the City under an assignment pursuant to the provisions of Article 5.

(2) Upon receipt in writing from said City the Contracting Officer shall furnish to said City in writing the true cost to the Government of said Aqueduct. Thereupon the City shall have the right and option to purchase said Aqueduct by paying to said Government said true cost of said Aqueduct, provided that the purchase has been first authorized by a vote of two-thirds of the qualified electors of said City voting at an election held for that purpose, if the City is unable to pay said price out of the annual revenue for said year. In event that said purchase is so authorized by said electors at said election the Government shall convey to said City all of its right, title and interest in and to said Aqueduct and appurtenances, upon payment to said Government of the full and true cost of said Aqueduct, minus any rentals theretofore paid by said City under the terms and provisions of this lease-contract.

(v) Notwithstanding any of the foregoing provisions, this lease shall not continue for a period of more than thirty-two (32) years from date of delivery to the City. Should this lease terminate by reason of the expiration of such period, except such termination as may be occasioned by the City exercising the option to purchase, as hereinabove provided, then the Aqueduct, together with all replacements and improvements, shall be redelivered to the Government, free of encumbrance, and in as good condition as when delivered to the City, reasonable wear and tear excepted.

ARTICLE 2—FACILITIES AND SERVICE TO BE FURNISHED BY CITY.

(a) The City, at its own expense, shall diligently prosecute to completion that water treatment plant and additions to the water transportation system and connections to the distribution system as contemplated by the City Bond Issue approved at the election held in said City on the 17th day of April, 1943.

(b) The City shall diligently pursue and the Council of said City shall forthwith take such legal steps as may be necessary and authorized by law to secure an adequate supply of water from the Metropolitan Water District of Southern California to be supplied through said Aqueduct.

(c) The City shall exert every reasonable effort to supply all Government agencies and establishments within the area with an adequate supply of fresh, clear and potable water at applicable and non-discriminatory rates, provided, however, that this agreement shall in no way estop the Government from taking appropriate action with re-

spect to any rates or service which it may deem unreasonable or otherwise improper. This stated obligation of service shall not be limited to any particular source of water.

ARTICLE 3—TRUE COST TO GOVERNMENT OF AQUEDUCT.

(a) The true cost to the Government of the Aqueduct is herein defined as the sum of (i) the cost of acquisition of all rights in real property acquired for either the construction or operation of the Aqueduct, including incidental costs such as appraisals, surveys, maps, title evidence, court costs, and the like, (ii) the cost of construction contracts utilized in the accomplishment of the Aqueduct plus the reasonable value of Government-furnished material and equipment furnished with respect thereto, and (iii) those costs incurred in the field for Government or other employees (exclusive of naval officers) and equipment in conection with the work on the Aqueduct (excluding that required in the preparation of presently existing specifications) which the Contracting Officer finds to be in excess of those costs which would have been incident to the ordinary maintenance of Government establishments in the absence of such work.

(b) It is anticipated that the City and the Contracting Officer will be able to agree upon all items of such true cost. To the extent agreement is reached, such agreement shall, in the absence of fraud, supersede for the items covered the application of the above stated definition of true cost. To the extent that agreement is not reached, the determination of whether disputed items are a part of true cost within said definition shall be deemed a question of fact within the meaning of Article 9 hereof.

ARTICLE 4—RIGHT OF REENTRY UPON DEFAULT.

Should the City, after the delivery to it of possession of the Aqueduct as hereinabove provided, default or continue in default in any of the rental payments to be made by it to the Government or in any of its other undertakings hereunder, whether included in the lease arrangement or otherwise, and remain in such default after sixty (60) days from written notice to it from the Contracting Officer to remedy such default, then the Government at its option and without prejudice to such other rights as it may have, may re-enter and take exclusive possession of such Aqueduct, with or without process of law, and free and clear of any obligation in respect thereto to the City or any one claiming through the City. Rental payments made by the City prior to the date of such reentry shall be retained by the Government and any rental payments accrued but unpaid on such date (and for this purpose rent shall be deemed to accrue pro rata from day to day) shall be forthwith paid to the Government, all such payments being deemed to be compensation for the use of the Aqueduct during the period of the City's possession.

ARTICLE 5—ASSIGNMENT.

Neither this contract, nor any interest therein, nor any claim arising thereunder, shall be transferred by the City to any party or parties without the written approval thereto of the Government; provided, however, that the Government will consent to the assignment of the City's rights and interests herein to either the Metropolitan Water District of Southern California and/or the San Diego County Water Authority, upon such terms and conditions as may then be deemed reasonable by the Con-

tracting Officer for the purpose of preserving the intent of this agreement and the protection of the Government's interest therein.

ARTICLE 6—FAILURE TO INSIST ON COMPLIANCE—REMEDIES NOT EXCLUSIVE.

Failure of the Government in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any provided right or option herein conferred, shall not be construed as a waiver or relinquishment for the future of any such terms, options or rights. Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

ARTICLE 7—COVENANT AGAINST CONTINGENT FEES.

The City warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees.

ARTICLE 8—OFFICIALS NOT TO BENEFIT.

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 9—DISPUTES.

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the City within 30 days to the Secretary of the Navy or his duly authorized representative, whose decision shall be final and conclusive. Pending decision, the City shall diligently proceed with performance.

ARTICLE 10—NONDISCRIMINATION IN EMPLOYMENT.

The City in performing work under this contract shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The City shall include an identical provision in all of its subcontracts. For the purposes of this article, subcontracts shall include all purchase orders and agreements to perform all or any part of the work, or to make or furnish any article required for the performance of this contract, except purchase orders or agreements for the furnishing of standard commercial articles or raw materials.

ARTICLE 11—LABOR PROVISIONS.

In the event the City accomplishes any of its undertakings hereunder by private contract, such contract or contracts shall contain appropriate provisions to assure compliance with the following acts to the extent the same are applicable:

Davis Bacon Act (U. S. C. 276a as amended);
Copeland Act (40 U. S. C. 276b and 276c); and
The Eight Hour Law (40 U. S. C. 321, 324-6, as in part modified by Section 303 of Pub. Act No. 781, 76th Congress, approved Sept. 9, 1940).

ARTICLE 12—CONTRACTING OFFICER.

The designation "Contracting Officer" means the Chief of the Bureau of Yards and Docks or any one authorized to act for him.

This negotiated contract is made pursuant to the provisions of the First War Powers Act, 1941, the Second War Powers Act, 1942, and the Act of July 2, 1940 (54 Stat. 712).

In Witness Whereof the parties hereto have executed this contract the day and year first above written.

UNITED STATES OF AMERICA,
By B. MAXWELL,
Chief of the Bureau of Yards and Docks, Navy Department

THE CITY OF SAN DIEGO,
By F. A. RHODES,
City Manager.

Witnesses:
KIRBY SMITH.
FRIEDA HEILBRUN.

I hereby approve the form and legality of the foregoing Contract, this 17 day of October, 1945.

J. F. DUPAUL,
City Attorney.

APPENDIX NO. 26

ASSIGNMENT BY SAN DIEGO TO METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

March 14, 1947

This Agreement made this 14th day of March, 1947, between the **City of San Diego,** a municipal corporation, and **The Metropolitan Water District of Southern California,** a public corporation of the State of California.

Witnesseth: That

1. **Whereas,** the City of San Diego, under date of April 15, 1926, filed an application with the Division of Water Resources, Department of Public Works of the State of California, seeking a permit to appropriate from the Colorado River 112,000 acre feet annually of the waters of said river for use in the City of San Diego, which application is now pending before the Division of Water Resources and is designated Application No. 4997; and.

2. **Whereas,** under date of August 18, 1931, the Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, the City of Los Angeles, the City of San Diego and County of San Diego entered into an agreement fixing their respective priorities in the waters of the Colorado River available for use in California under the Colorado River Compact and the Boulder Canyon Project Act, which contract is commonly referred to as the "Seven-Party Priority Agreement"; and

3. **Whereas**, under date of February 15, 1933, the United States and San Diego entered into a water delivery contract approved by the County of San Diego, providing for the delivery by the United States to the City of San Diego of certain waters of the Colorado River in accordance with the schedule of priorities fixed in said Seven-Party Priority Agreement, said contract being for the benefit of the City of San Diego and the County of San Diego and commonly referred to as the "San Diego Water Delivery Contract"; and

4. **Whereas**, under date of October 4, 1946, a contract was entered into between the United States of America, the City of San Diego, the San Diego County Water Authority, a municipal corporation of the State of California, and The Metropolitan Water District of Southern California, providing for the merger of all the rights of the City of San Diego to the storage and delivery of Colorado River water under the "San Diego Water Delivery Contract" with the rights of The Metropolitan Water District of Southern California to the storage and delivery of Colorado River water under a water delivery contract between the United States of America and The Metropolitan Water District of Southern California, dated April 24, 1930, as amended by a Supplementary Contract dated September 28, 1931, and further providing that the diversion point of water heretofore agreed to be delivered to the City of San Diego under said water delivery contract of February 15, 1933, should be changed from a point on the Colorado River immediately above Imperial Dam to The Metropolitan Water District of Southern California's intake at a point on the Colorado River immediately above Parker Dam, said contract being contingent upon annexation of San Diego County

Water Authority to The Metropolitan Water District of Southern California prior to January 1, 1947; and

5. **Whereas,** San Diego County Water Authority, pursuant to the will of a majority of the qualified electors of said County Water Authority voting thereon at a special election held for that purpose on November 5, 1946, has become annexed to and is now a part of The Metropolitan Water District of Southern California, such annexation proceedings having been completed on the 17th day of December, 1946;

Now, Therefore, in consideration of the premises and in furtherance of the mutual covenants and agreements contained in that certain contract merging the rights of the City of San Diego and The Metropolitan Water District of Southern California, dated October 4, 1946, the City of San Diego does hereby grant and convey to The Metropolitan Water District of Southern California all of its right and interest in and to the storage and delivery of Colorado River water as evidenced by said water-delivery contract of February 15, 1933, together with all of its right and interest in and to the use of the waters of the Colorado River under any act of appropriation heretofore made, and does hereby assign and transfer to The Metropolitan Water District of Southern California any and all rights it may have acquired, or may in the future acquire, under and by virtue of that certain application to appropriate water from the Colorado River heretofore referred to and designated Application No. 4997.

In Witness Whereof, the parties hereto have executed this contract the day and year first above written.

CITY OF SAN DIEGO

By F. A. RHODES

City Manager

Attest: [Seal]
FRED W. SICK
City Clerk.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
By JULIAN HINDS
J. H. H.
General Manager and Chief Engineer

Attest: [Seal]
A. L. GRAM
Executive Secretary

Approved Jan. 27, 1947

COUNTY OF SAN DIEGO
By DEGRAFF AUSTIN
Chairman, Board of Supervisors

Attest: [Seal]
J. B. MCLEES,
County Clerk and ex officio Clerk
of the Board of Supervisors
By: M. NASLAND, Deputy

SAN DIEGO COUNTY WATER AUTHORITY
By J. L. BURKHOLDER
General Manager and Chief Engineer

Attest: [Seal]
ELEANOR LONGFELLOW
Executive Secretary

Approved as to form and execution
JAMES H. HOWARD
General Counsel

DMK

APPENDIX NO. 27

UNITED STATES AND SAN DIEGO: CONSTRUCTION OF A SECOND AQUEDUCT "BARREL"

April 1, 1952

This Supplemental Agreement No. 4 to Contract NOy-13300, entered into as of the 1st day of April 1952, between the **United States of America** (hereinafter called the "Government"), represented by the Chief of the Bureau of Yards and Docks, Navy Department, and **San Diego County Water Authority**, a public corporation, organized and existing under and by virture of the laws of the State of California (hereinafter called the "Authority");

Witnesseth:

Whereas, the Government and the City of San Diego on October 17, 1945 entered into Contract NOy-13300 wherein the Government undertook to construct, and the City undertook to lease, operate and maintain, an Aqueduct (hereinafter called the "Aqueduct") from a connection with the Colorado River Aqueduct of the Metropolitan Water District of Southern California, near the West Portal of the San Jacinto Tunnel in Riverside County, to San Vicente Reservoir in San Diego County; and

Whereas, by virtue of compliance with the terms and conditions of Supplemental Agreement No. 1 to Contract NOy-13300, entered into as of September 23, 1946, the Authority is the assignee in part of the City's rights and obligations under Contract NOy-13300; and

Whereas, under Supplemental Agreement No. 2 to Contract NOy-13300, entered into October 29, 1946, Contract NOy-13300 was modified to reserve title to certain transition and diversion structures in the Metropolitan Water District of Southern California (hereinafter called the "District"); and

Whereas, under Supplemental Agreement No. 3 to Contract NOy-13300, entered into as of December 11, 1947, the Authority has been in possession and use of the Aqueduct on an interim basis from January 1, 1948 to December 31, 1951, and, in consideration thereof, has paid $1,000,000 to the Government; and

Whereas, pursuant to Contract NOy-13300, the Government delivered and the Authority received possession of the Aqueduct on January 1, 1952; and

Whereas, under Public Law 171 of the 82nd Congress the Secretary of the Navy was authorized, upon amendment of Contract NOy-13300 as therein set forth, to provide for the construction of a new aqueduct (hereinafter called the "Second Barrel") paralleling the existing Aqueduct; and

Whereas, subject to the continued availability of authority and appropriations, the Government is prepared (without guaranty, warranty or any other liability on its part in connection therewith), to undertake the construction at its own expense of the Second Barrel in accordance with such plans, drawings and specifications as the Contracting Officer (after such consultation with the Authority as he shall deem appropriate) shall in his sole and exclusive discretion approve, for the purpose of providing an estimated rated capacity of not less than approximately 80 cubic feet per second, at an estimated

cost not exceeding $18,000,000. (All of the foregoing being matter of description and not of guaranty, warranty or representation on the part of the Government):

Now, Therefore, it is mutually agreed that Contract NOy-13300, as heretofore supplemented and modified by Supplemental Agreements 1, 2 and 3, be and it hereby is further supplemented and amended as follows:

1. The Government, its contractors, and their successors, assigns, officers, agents and employees, shall have the right, free of rental or similar charge and without being considered in default or violation of any of the provisions of Contract NOy-13300, to enter upon the Aqueduct for the purpose of constructing and maintaining the Second Barrel; and the Authority shall at all times cooperate with the Government, its contractors and their successors, assigns, officers, agents and employees as may be reasonably necessary and appropriate for the construction of the Second Barrel. The Authority shall also procure, and be responsible for, such cooperation of the Metropolitan Water District of Southern California as may be reasonably necessary and appropriate for the construction, maintenance and operation of the Second Barrel.

2. Upon completion of the Second Barrel, as determined by the Contracting Officer, the Government shall deliver the possession thereof to the Authority for use in its water system and upon the following lease basis:

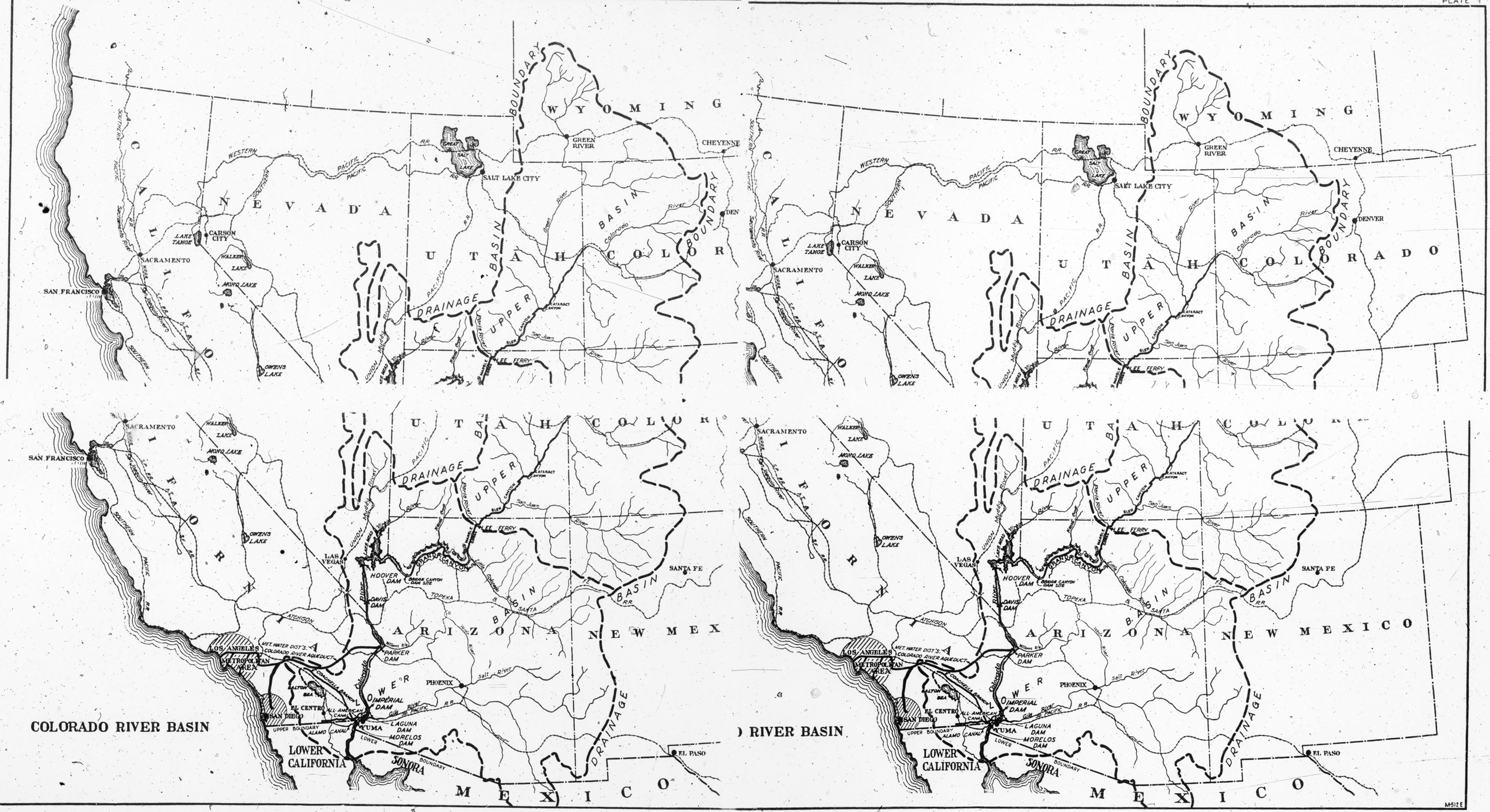
(a) The provisions of Article 1, subdivision (b), paragraphs (i), (ii) and (vi), and of Article 3, of Contract NOy-13300, as heretofore supplemented, are, with the substitution of "Second Barrel" for "Aqueduct" and "Authority" for "City" hereby incorporated herein and

made applicable to the Second Barrel; provided however, that the total cost to the Government of the Second Barrel shall include all costs incidental to the development of the plans, drawings and specifications therefor, except such costs as have been or may be advanced by the Authority pursuant to Contracts Symbol Nos. 176r-500 and 176r-701, respectively, entered into April 25, 1949 and November 9, 1951, between the Authority and the Government.

(b) At the end of the first quarter after completion and delivery of possession of the Second Barrel to the Authority, and quarterly thereafter, the Authority shall pay to the Government as rental under this lease one-one hundred and sixtieth (1/160th) part of the full amount of the true cost of the Second Barrel (as herein defined). In the event that the true cost shall not be determined at the time of the completion and delivery of possession of the Second Barrel hereunder, the parties hereto shall proceed upon the basis of true cost as estimated by the Contracting Officer, subject to adjustment of the agreed installment payments hereunder when true cost shall be finally determined. In addition, the Authority shall pay with each quarterly installment of rent a sum representing interest on the balance of such true cost remaining after deducting therefrom the amount of all rental installments theretofore paid hereunder, such interest to be computed at a rate of 2.599 per cent per annum. The rental and interest provided hereunder for the Second Barrel shall be in addition to the annual rental of $500,000.00 provided for the Aqueduct under Article I, subdivision (b), of Contract NOy-13300, which rental shall continue to be paid in accordance therewith until the remaining balance of the true cost of the Aqueduct is paid in full.

(c) Paragraph (iv) and (v) of Article I, subdivision (b) of Contract NOy-13300 as heretofore supplemented are hereby cancelled and in lieu thereof it is agreed that the lease of the Second Barrel and the lease of the Aqueduct shall continue until such time as the Authority has paid to the Government in rentals the full amount of the true cost to the Government (as defined for the Aqueduct in Contract NOy-13300 as heretofore supplemented and as defined herein for the Second Barrel) of the Aqueduct and the Second Barrel. The Authority at its option shall have the right at any time to pay in advance any portion of the true cost then unpaid, with accrued interest to date of payment, and in the event of such advance payment the installments remaining, if any, shall be reduced to provide for equal installments throughout the remaining lease period. Upon completion of payment of rentals by the Authority to the Government in amounts equal to the sum of the true cost of the Aqueduct and the true cost of the Second Barrel, and of all interest due in connection with the Second Barrel, the lease of the Aqueduct and the lease of the Second Barrel shall terminate and the Government shall convey to the Authority, or its assigns, all of its rights, title and interest in and to the Aqueduct and the Second Barrel and their appurtenances.

3. This agreement shall be of no force and effect until and unless the City of San Diego, the City of Chula Vista, the Fallbrook Public Utility District, the Lakeside Irrigation District, the La Mesa, Lemon Grove and Sweetwater Irrigation District, the City of National City, the City of Oceanside, the City of Escondido, the San Dieguito Irrigation District, and the Santa Fe Irrigation District, comprising all of the member agencies of the Authority, shall enter into the annexed collateral agree-


WYOMING
NEVADA
UTAH
COLORADO
ARIZONA
NEW MEXICO
MEXICO
CALIFORNIA
GREEN RIVER
CHEYENNE
SALT LAKE CITY
DENVER
SACRAMENTO
SAN FRANCISCO
LAKE TAHOE
CARSON CITY
WALKER LAKE
MONO LAKE
OWENS LAKE
LAS VEGAS
HOOVER DAM
BOULDER CANYON DAM SITE
DAVIS DAM
PARKER DAM
IMPERIAL DAM
LAGUNA DAM
MORELOS DAM
YUMA
PHOENIX
SANTA FE
EL PASO
LEE FERRY
CATARACT CANYON
GLEN CANYON
LOS ANGELES METROPOLITAN AREA
MET. WATER DIST'S. COLORADO RIVER AQUEDUCT
SALTON SEA
EL CENTRO
SAN DIEGO
ALL AMERICAN CANAL
COACHELLA BRANCH
ALAMO CANAL
UPPER BOUNDARY
LOWER BOUNDARY
SONORA
UNION PACIFIC R.R.
SOUTHERN PACIFIC R.R.
ATCHISON, TOPEKA & SANTA FE R.R.
GREAT SALT LAKE
Colorado River
Green River
San Juan River
Virgin River
Gila River
Salt River
Williams River
Little Colorado River
Paria River
Muddy River
Las Vegas Wash
Sacramento River
San Joaquin River
UPPER BASIN
LOWER BASIN
DRAINAGE BASIN BOUNDARY
COLORADO RIVER BASIN

M512E

PLATE 2

CALIFORNIA DEVELOPMENTS ON COLORADO RIVER

OWENS LAKE
OWENS RIVER AQUEDUCT
PANAMINT VALLEY
DEATH VALLEY
NEVADA CALIFORNIA
ARIZONA NEVADA
GRAND WASH
LAS VEGAS
LAKE MEAD
HOOVER DAM
BRIDGE CANYON DAMSITE
RED LAKE
PEACH SPRINGS
IVANPAH VALLEY
LAKE MOJAVE
PIUTE
MOHAVE VALLEY
DAVIS DAM
KINGMAN
BAKERSFIELD
MOJAVE
POWER LINES
SODA LAKE
BARSTOW
DAGGETT
MOJAVE DESERT
BOULDER
LUDLOW
GOFFS
NEEDLES
TOPOCK
CHEMEHUEVIS VALLEY
HUALPAI MTS
VICTORVILLE
LUCERNE VALLEY
CADIZ
LAKE HAVASU
CALIFORNIA ARIZONA
HEAD GATE ROCK DAM
WILLIAMS RIVER
PARKER DAM
PARKER
RICE
VENTURA
BURBANK
GLENDALE
PASADENA
BEVERLY HILLS
LOS ANGELES
SAN MARINO
SAN BERNARDINO
COLTON
SANTA MONICA
COMPTON
FULLERTON
RIVERSIDE
BEAUMONT
TORRANCE
ANAHEIM
LONG BEACH
LAKE MATHEWS
PERRIS
SANTA ANA
ELSINORE LAKE
LAGUNA BEACH
COLORADO RIVER AQUEDUCT
PINTO BASIN
COACHELLA VALLEY COUNTY WATER DISTRICT
COACHELLA VALLEY
INDIO
SALTON SEA
CHUCKWALLA VALLEY
BLYTHE
WEIR
PALO VERDE IRRIGATION DISTRICT
COLORADO RIVER
COACHELLA BRANCH
IMPERIAL VALLEY IRRIGATION DISTRICT
IMPERIAL
EL CENTRO
ALL AMERICAN CANAL
PILOT KNOB
BARD IRRIGATION DIST.
IMPERIAL DAM
LAGUNA DAM
YUMA PROJECT (CALIF.)
GILA RIVER
YUMA
SIPHON DROP
MORELOS DAM
ALAMO CANAL
SERVICE AREA OF COLORADO RIVER AQUEDUCT
SAN DIEGO
PACIFIC OCEAN
CALIFORNIA
MEXICO
LOWER CALIFORNIA
ARIZONA
MEXICO

SCALE IN MILES
0 5 10 25 50

PALO VERDE VALLEY

RIVERSIDE & IMPERIAL COUNTIES CALIFORNIA

PALO VERDE IRRIGATION DISTRICT

MAP SHOWING

DISTRICT IRRIGATION SYSTEM AND PROPOSED ADJACENT DEVELOPMENT

APRIL 1, 1953

SAN BERNARDINO BASE LINE AND MERIDIAN

SCALE OF MILES 0 1 2 3 4

- DISTRICT BOUNDARY
- LEVEES
- DRAINAGE CANALS
- IRRIGATION CANALS
- PROPOSED MAIN CANALS AS DESIGNED ON MESA
- PROPOSED PUMPING PLANT FOR MESA
- SURFACE DRAINS

PLATE 3

water now flowing in said river, all of which is now subject to appropriation in Arizona; to withhold all of said water from appropriation and to prohibit the appropriation thereof; to withhold all of said water from use in Arizona, or, if he permits any such use, to require payment of such charges therefor as he may prescribe; and to sell and dispose of any part or all of said water for use in other States, even to the extent of selling and delivering it for use outside of the drainage basin of the Colorado River; all of which is to be done without the consent of the State of Arizona and in violation of its laws. Thereby said act attempts to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate said 8,000,000 acre-feet of unappropriated water, and of their right to use any of said water in Arizona, except by contract with the Secretary of the Interior and upon payment of such charges as he may prescribe.

* * * * * * * * *

XXXII

Pursuant to and under color of said act and of said regulations, said defendant Ray Lyman Wilbur has made a pretended contract with the Metropolitan Water District of Southern California, a municipal corporation of the State of California, for the storage of water in said reservoir and for the diversion, sale and delivery of said water to said District for transportation to and consumptive use in said District. A copy of said pretended contract is appended hereto at page 79. Said District consists of the City of Los Angeles and the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Glendale, Pasadena, San Bernardino, San Marino, Santa Ana and Santa Monica, which are municipal corporations of the

State of California. Said District is situated on the Pacific Coast approximately 300 miles distant from the Colorado River and outside of its drainage basin. No public land of the United States is contained within the limits of said District. Said pretended contract is for permanent service, and provides for the delivery to said District of 1,050,000 acre-feet of said stored water annually, and for the payment by said District of 25 cents per acre-foot for water so delivered. Said 1,050,000 acre-feet of water, if sold and delivered to said District, as in said pretended contract provided, cannot, nor can any part thereof, be used for the reclamation of public land of the United States. Said water is a part of the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said 1,050,000 acre-feet of water, together with the 6,500,000 acre-feet of water heretofore appropriated and now being used in said Lower Basin, will exceed the full amount of 7,500,000 acre-feet of water which said compact attempts to apportion to said Lower Basin. The delivery of said 1,050,000 acre-feet of water to said District, as in said pretended contract provided, would exhaust said apportionment, and, by the terms of said compact and of said Boulder Canyon Project Act, no water would then be available for or subject to appropriation in said Lower Basin, although there would still remain in said Colorado River System 7,950,000 acre-feet of unappropriated water per year. Thus the effect of carrying out the provisions of the Boulder Canyon Project Act and of said pretended contract would be to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate any of the unappropriated water of said Colorado River System, aggregating,

as aforesaid, 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona.

XXXIII

Pursuant to and under color of said act, said defendant Ray Lyman Wilbur has made and prescribed general regulations for the lease of electric power to be generated at said dam. A copy of said regulations is appended hereto at page 89. Pursuant to and under color of said act and of said regulations, said defendant has made a pretended contract with said City of Los Angeles and Southern California Edison Company, Limited, a corporation of the State of California, for the lease of power privileges at said dam, and a pretended contract with said Metropolitan Water District of Southern California for the sale of electric power to be generated at said dam. Said pretended contract for the lease of power privileges provides for the leasing of certain generating machinery to be installed by said defendant, part to said City and part to said Company; for the generation by said lessees of all electric power allotted by said defendant; for the delivery to said lessees of falling water from said reservoir sufficient to generate all power so sold; for the sale to said lessees, respectively, of amounts of electric power specified therein; and for the payment by said lessees of the cost of said machinery, and certain further sums on account of electric power to be taken by said lessees. Said pretended contract is for a period of 50 years. The pretended contract with said District in this paragraph referred to provides for the sale to said District of specified amounts of electric power annually for a period of 50 years. Said power is to be used for the sole purpose of pumping into and in a proposed aqueduct, to be

constructed by said District, the 1,050,000 acre-feet of water to be sold and delivered to said District, as provided in the pretended contract referred to in the last preceding paragraph hereof. The three pretended contracts hereinabove referred to are made upon the express condition that all rights thereunder shall be subject to and controlled by the Colorado River Compact. For the reasons heretofore stated, all of said pretended contracts are void and of no effect. Nevertheless, said defendant, unless enjoined therefrom, will carry out all the provisions of said pertended contracts.

* * * * * * * * *

FROM THE ARIZONA BRIEF:

The Wilbur brief on pages 9 and 19 totally misconceives and misstates the meaning and effect of the Compact, as is shown by pages 40 and 41 of the Colorado brief. The apportionment of beneficial use of water to the two basins made in Article III of the Compact is not, as the Wilbur brief appears to believe, restricted to uses from the main stream of the Colorado River, but includes, as the Compact specifically states and as the Colorado brief affirms, uses from the whole "Colorado River System" which by definition includes its tributaries. The apportionment to the Lower Basin from the whole river system is by Article III (a) the beneficial consumptive use in perpetuity of 7,500,000 acre-feet of water, which includes all water necessary for the supply of all rights which exist in the Lower Basin upon the whole river system.

The provision in paragraph (d) of Article III that the Upper Basin States will not cause the flow of the river to be depleted below 75,000,000 acre-feet over ten year periods, has, as the Colorado brief, page 41, correctly

as aforesaid, 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona.

XXXIII

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constructed by said District, the 1,050,000 acre-feet of water to be sold and delivered to said District, as provided in the pretended contract referred to in the last preceding paragraph hereof. The three pretended contracts hereinabove referred to are made upon the express condition that all rights thereunder shall be subject to and controlled by the Colorado River Compact. For the reasons heretofore stated, all of said pretended contracts are void and of no effect. Nevertheless, said defendant, unless enjoined therefrom, will carry out all the provisions of said pertended contracts.

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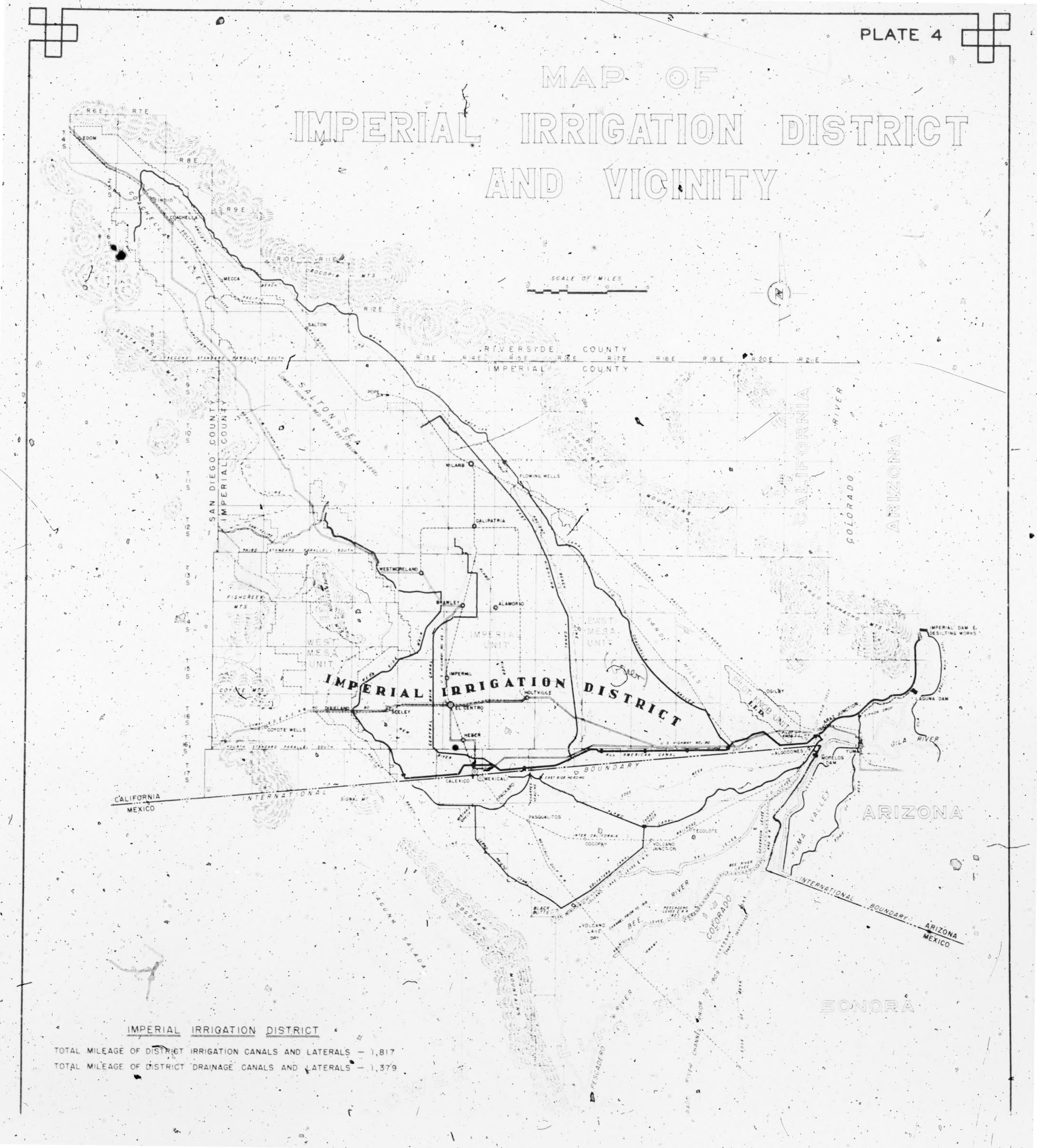
The provision in paragraph (d) of Article III that the Upper Basin States will not cause the flow of the river to be depleted below 75,000,000 acre-feet over ten year periods, has, as the Colorado brief, page 41, correctly

PLATE 4

MAP OF IMPERIAL IRRIGATION DISTRICT AND VICINITY


R6E
R7E
R8E
R9E
R10E
R11E
R12E
R13E
R14E
R15E
R16E
R17E
R18E
R19E
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R21E
T4S
T5S
T6S
T7S
T8S
T9S
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T11S
T12S
T13S
T14S
T15S
T16S
T17S
SCALE OF MILES
RIVERSIDE COUNTY
IMPERIAL COUNTY
SAN DIEGO COUNTY
IMPERIAL COUNTY
CALIFORNIA
ARIZONA
SONORA
COLORADO RIVER
SALTON SEA
EDOM
INDIO
COACHELLA
COACHELLA VALLEY
MECCA
DATE PALM BEACH
SALTON
CROCOPIA MTS
SANTA ROSA MTS
FRESNO STANDARD
KINGSBURG SOUTH
THIRD STANDARD PARALLEL SOUTH
FOURTH STANDARD PARALLEL SOUTH
POPE
NILAND
FLOWING WELLS
CALIPATRIA
WESTMORELAND
BRAWLEY
ALAMORIO
IMPERIAL
HOLTVILLE
EL CENTRO
HEBER
DAIRYLAND
SCELEY
COYOTE WELLS
CALEXICO
MEXICALI
EAST SIDE MESA
WEST MESA UNIT
IMPERIAL UNIT
EAST MESA UNIT
FISHCREEK MTS
COYOTE MTS
SIGNAL MT
PASQUALITOS
INTER CALIFORNIA
COCOPAH
VOLCANO JUNCTION
TECOLOTE
BLACK BUTTE
VOLCANO LAKE DRY
LAGUNA SALADA
COCOPAH MOUNTAINS
CHOCOLATE MOUNTAINS
CARGO MUCHACHO MTS
IMPERIAL IRRIGATION DISTRICT
IMPERIAL DAM & DESILTING WORKS
LAGUNA DAM
OGILBY
ALGODONES
MORELOS DAM
YUMA
GILA RIVER
EAST JUNCTION
SIPHON DROP
PILOT KNOB UNIT
PILOT KNOB
YUMA VALLEY
INTERNATIONAL BOUNDARY
CALIFORNIA
MEXICO
ARIZONA
MEXICO
BEE RIVER LEVEE
PESCADERO LEVEE
PESCADERO RIVER
BAJA
RIVER CHANNEL PRIOR TO 1909
U.S. HIGHWAY NO. 80
ALL AMERICAN CANAL
EAST SIDE MESA
SAN DIEGO CANAL
WESTSIDE MAIN CANAL
EAST HIGHLINE CANAL
WEST HIGHLINE CANAL
SOUTHERN PACIFIC RAILROAD
SOUTHERN PACIFIC LINES
SAN DIEGO CANAL
COACHELLA BRANCH
CENTRAL MAIN CANAL
U.S. HIGHWAY NO. 80

IMPERIAL IRRIGATION DISTRICT

TOTAL MILEAGE OF DISTRICT IRRIGATION CANALS AND LATERALS -- 1,817

TOTAL MILEAGE OF DISTRICT DRAINAGE CANALS AND LATERALS -- 1,379

SCALE OF MILES

0 5 10 15

R10E R11E R12E R13E R14E R15E R16E R17E R18E R19E R20E R21E

T8S T9S T10S T11S T12S T13S T14S T15S T16S T17S

RIVERSIDE COUNTY

IMPERIAL COUNTY

SAN DIEGO COUNTY

IMPERIAL COUNTY

IMPERIAL IRRIGATION DISTRICT

MECCA BEACH

SALTON

SALTON SEA

LOWEST POINT IN BED 275 FEET BELOW SEA LEVEL

POPE

MILAND

FLOWING WELLS

CALIPATRIA

WESTMORELAND

BRAWLEY

ALAMORIO

IMPERIAL

HOLTVILLE

EL CENTRO

HEBER

SEELEY

DIXIELAND

COYOTE WELLS

CALEXICO

MEXICALI

PASQUALITOS

COCOPAH

VOLCANO JUNCTION

OGILBY

ARAZ JUNCTION

ALGODONES

MORELOS DAM

YUMA

IMPERIAL DAM & DESILTING WORKS

LAGUNA DAM

GILA RIVER

YUMA VALLEY

EAST MESA UNIT

WEST MESA UNIT

PILOT KNOB UNIT

I.I.D.

SAND HILLS

CHOCOLATE MOUNTAINS

CARGO MUCHACHO MTS

SANTA ROSA MTS

FISHCREEK MTS

COYOTE MTS

SUPERSTITION MTS

SIGNAL MT

LAGUNA SALADA

PESCADERO MOUNTAINS

BLACK BUTTE

VOLCANO LAKE DRY

MONTAGUE ISLAND

CALIFORNIA

ARIZONA

SONORA

LOWER CALIFORNIA

COLORADO RIVER

BEE RIVER

PESCADERO RIVER

INTERNATIONAL BOUNDARY

CALIFORNIA MEXICO

ARIZONA MEXICO

GULF OF CALIFORNIA

SECOND STANDARD PARALLEL SOUTH

THIRD STANDARD PARALLEL SOUTH

FOURTH STANDARD PARALLEL SOUTH

ALL AMERICAN CANAL

EAST SIDE HEADING

COLORADO RIVER CHANNEL PRIOR TO 1905

G. REED - 1952

I.I.D. DWG NO. 7237

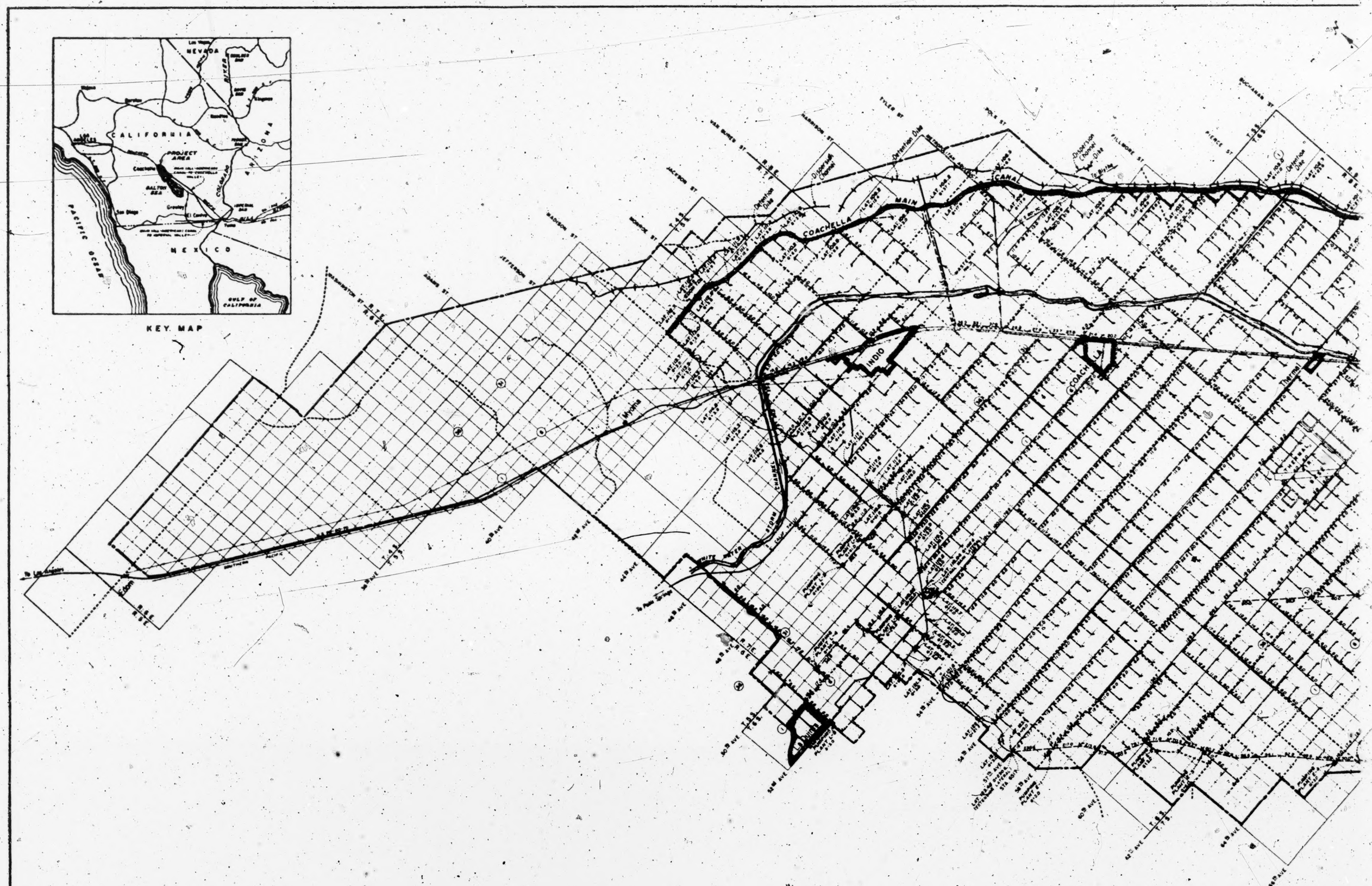
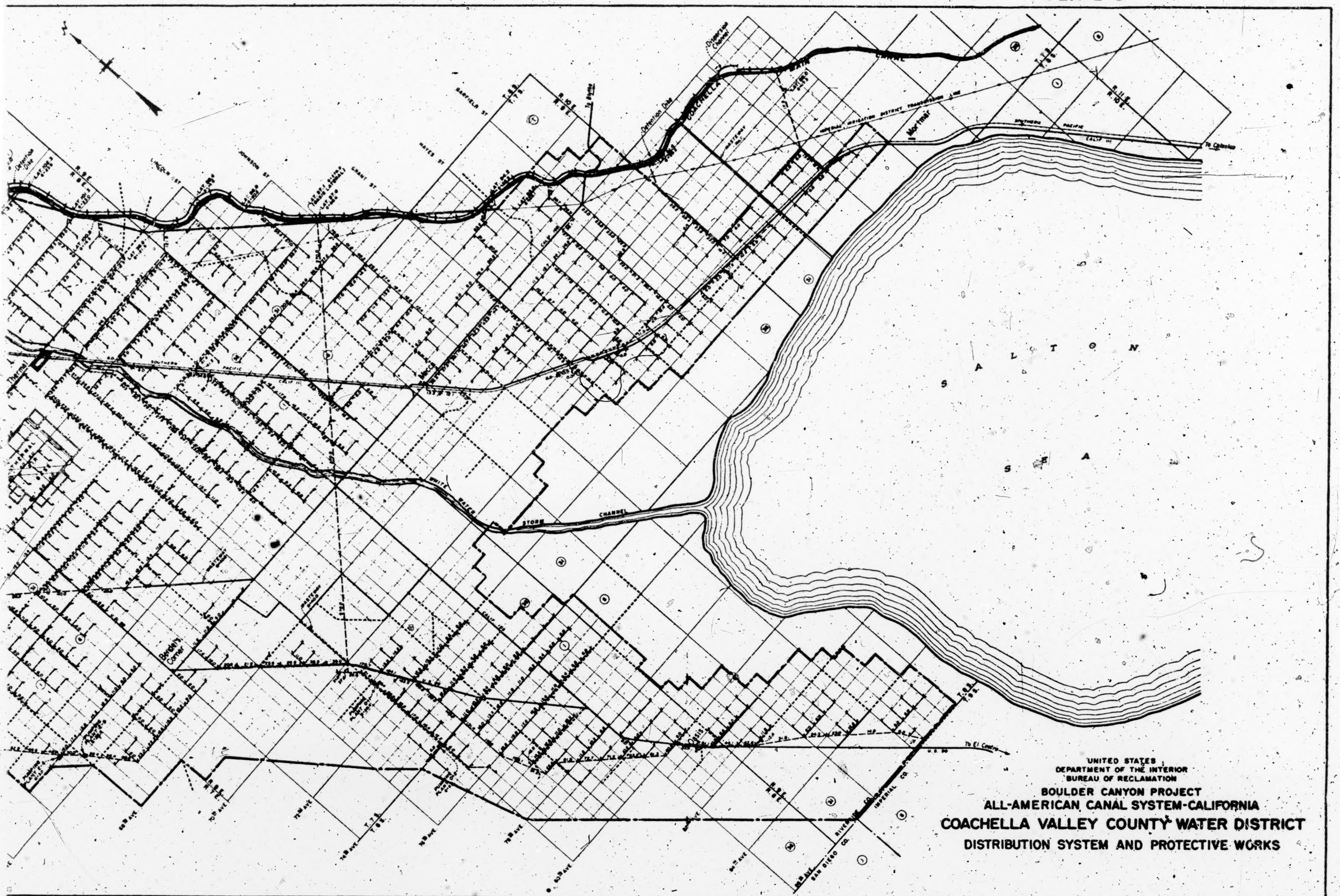

KEY MAP
NEVADA
CALIFORNIA
ARIZONA
PROJECT AREA
Coachella
SALTON SEA
San Diego
Yuma
MEXICO
PACIFIC OCEAN
GULF OF CALIFORNIA
COACHELLA MAIN CANAL
INDIO
COACHELLA
Thermal
Myoma
Detention Dike
Dispersion Channel
To Blythe
To Los Angeles
To Palm Springs
WHITE WATER STORM CHANNEL
WASHINGTON ST
JEFFERSON ST
MADISON ST
MONROE ST
JACKSON ST
VAN BUREN ST
HARRISON ST
TYLER ST
POLK ST
FILLMORE ST
PIERCE ST
BUCHANAN ST
R.8 E.
R.7 E.
R.6 E.
T.4 S.
T.5 S.
T.6 S.
T.7 S.
30th AVE
42nd AVE
44th AVE
48th AVE
50th AVE
52nd AVE
54th AVE
56th AVE
60th AVE
62nd AVE
64th AVE
66th AVE

PLATE 5



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

ALL-AMERICAN CANAL SYSTEM-CALIFORNIA

COACHELLA VALLEY COUNTY WATER DISTRICT

DISTRIBUTION SYSTEM AND PROTECTIVE WORKS

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

COLORADO RIVER AQUEDUCT
DISTRIBUTION SYSTEM
SHOWING CONSTITUENT AREAS
(EXCEPT SAN DIEGO COUNTY WATER AUTHORITY)

ROBERT B. DIEMER
GENERAL MANAGER AND CHIEF ENGINEER

LEGEND

- AREA OF DISTRICT - 1953
- PROSPECTIVE ANNEXATION AREAS
- EXISTING AQUEDUCT SYSTEM
- UNDER CONSTRUCTION
- PROPOSED FUTURE CONSTRUCTION

SCALE IN FEET

SCALE IN MILES

POLYCONIC PROJECTION NORTH AMERICAN DATUM 1927

L-600-1

PLATE 6B

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

SHOWING CONSTITUENT AREAS
IN
SAN DIEGO COUNTY

FEBRUARY 1940

ROBERT B. DIEMER
GENERAL MANAGER AND CHIEF ENGINEER

LEGEND

A

RIVERSIDE COUNTY

SAN DIEGO COUNTY

OCEANSIDE

SAN DIEGO

M E X I C O

LIBRARY
SUPREME COURT, U.S.

MAY 19 1953

IN THE

Supreme Court of the United States

October Term, 1952
No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

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OUTLINE OF ANSWER.

Page

First Affirmative Defense—The Defendants have the right to the beneficial consumptive use of 5,362,000 acre-feet per annum of water of the Colorado River System under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto 1

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IN THE

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

ANSWER OF DEFENDANTS TO BILL OF COMPLAINT.

Defendants, by Their Duly Authorized Attorneys, Jointly Answer the Complaint Herein as Follows.

FIRST AFFIRMATIVE DEFENSE.

Defendants Have the Right to the Beneficial Consumptive Use of 5,362,000 Acre-feet per Annum of Waters of the Colorado River System Under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact Between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto.

A. HISTORICAL AND GEOGRAPHICAL BACKGROUND.

1.

Introduction.

The defendants in this action are the State of California and public agencies of this State authorized by its laws to serve water to their inhabitants and lands. The rights which the State and these agencies defend are their rights to the beneficial consumptive use of waters of the Colorado River System for projects already constructed and now operating. These projects represent more than 75 years of continuous development, the oldest dating from 1877, the newest from 1923.

More than four million inhabitants of the State of California use, and are dependent in whole, or in substantial part, upon the waters of the Colorado River System. The area within the defendant agencies served by these waters exceeds two and one-half million acres. More than sixty California cities and other public entities are served with water from the Colorado River System. To provide this service, the defendants have constructed, or have obligated themselves to pay the cost of, works costing more than five hundred million dollars. Within the area served by these works the value of property now exceeds twelve billion dollars, and the gross value of the products of agriculture and industry in 1952 exceeded $3,500,000,000. The economy of Southern California is dependent upon the use of the waters here in controversy.

This controversy centers on the desire of Arizona to secure a right to the use of water for the Central Arizona Project, which has not been authorized by the Congress. She seeks to obtain water for that project by taking it from the existing and operating California projects.

Further details as to the proposed Arizona project appear in Paragraphs 65 and 66 of this Answer.

This First Affirmative Defense is concerned with the rights of the defendants under contracts into which they entered with the United States, more than twenty years ago, for the delivery to them of water under the Boulder Canyon Project Act. It outlines (A) the projects dependent upon the waters to be delivered under these contracts, (B) the provisions of the Colorado River Compact, (C) the provisions of the Boulder Canyon Project Act and (D) the provisions of the contracts themselves.

The Second Affirmative Defense alleges the facts which estop Arizona from questioning the validity of these contracts; the Third, the appropriative rights of the defendants; the Fourth, the indispensability of the United States as a party to this action. The Traverse to the Complaint follows these Affirmative Defenses.

2.

The California Projects.

The projects which carry the waters of the Colorado River System into Southern California are three in number. From north to south they are as follows: (See Plates 1 and 2 in the Appendix to this Answer.)

(a) The Colorado River Aqueduct, financed and constructed by defendant The Metropolitan Water District of Southern California, diverts from the main stream of the Colorado River above Parker Dam, 155 miles below Hoover Dam and 170 miles above the Mexican border. The main aqueduct transports water 242 miles westward and there connects with a system of about 300 miles of distribution aqueducts to serve the cities and other public bodies which are parts of the District. These

cities now number 48, including defendants City of Los Angeles and City of San Diego. They extend 150 miles along the coastal plain of Southern California and encompass a service area of over 1500 square miles. The total direct investment in the Colorado River Aqueduct System to date is over $244,000,000, and, when works now under construction are completed, will be in excess of $300,000,000. These sums are in addition to the Hoover Dam power obligations of this District and the City of Los Angeles. The District's minimum water requirements from the Colorado River are in the amount of 1,212,000 acre-feet per year, and this is the quantity provided for in its contracts with the United States. A full description of this project is contained in Exhibit A to this Answer and is incorporated herein by reference as though here fully stated. (See also Plates 6A and 6B.)

(b) Defendant Palo Verde Irrigation District diverts water from the Colorado River at a point 212 miles below Hoover Dam and 113 miles above the Mexican border. It contains within its boundaries approximately 120,500 acres, including the lands of the Palo Verde Valley, the oldest irrigated area in the Colorado River Basin. Its people have spent more than $20,000,000 to build the works that serve this area. A full description of this project is contained in Exhibit B to this Answer and is incorporated herein by reference as though here fully stated. (See also Plate 3.)

(c) The All-American Canal diverts at Imperial Diversion Dam, 303 miles below Hoover Dam and 22 miles above the Mexican border. It transports water into the Imperial Valley for defendant Imperial Irrigation District and into Coachella Valley for defendant Coachella Valley County Water District, delivering water enroute to the

Yuma Reclamation Project, of which 25,000 acres are in California and 50,000 acres are in Arizona. The total California investment in this project is over $60,000,000. A full description of the All-American Canal project is contained in Exhibit C to this Answer and is incorporated herein by reference as though here fully stated. (See also Plates 4 and 5.)

The minimum water requirements from the Colorado River System of the Palo Verde Irrigation District, Yuma Project in California, Imperial Irrigation District and Coachella Valley County Water District, are 4,150,000 acre-feet per year, which is the quantity provided for by their contracts with the United States, and is within the quantities of their appropriations made a half-century and more ago.

3.

Background of Colorado River Compact.

(a) Prior to 1920 appropriators in California, and to a limited extent in Arizona, had appropriated and put to use all of the natural flow of the main stream of the Colorado River which existed in the late summer irrigating season. Uses by junior appropriators in Arizona, Colorado, Utah, New Mexico and Wyoming were interfering with the uses under the senior appropriations in California and Arizona. Satisfaction of such junior appropriations was dependent upon the construction of storage works to salvage the flood waters then wasting to the Gulf of California during the spring months of the year. These spring flood waters were a menace to all of the lands along the lower river in Arizona and California. The menace was increasing because the deposition of silt by the river in its delta area was constantly raising the river bed, making the protection of the threat-

ened areas by means of levees steadily more difficult and precarious. The geographical situation required the critical levees to protect Imperial Valley to be built and maintained in Mexico, and the main canal serving the Imperial Valley at that time followed a contour which carried it through Mexican territory enroute. The construction of an All-American Canal was essential to the removal of international complications and problems, and was of concern to all the States in the Colorado River Basin and to the United States. Commencing in 1918, legislation was introduced in the successive Congresses to authorize the construction of such an All-American Canal. In the course of consideration of such legislation there became apparent the necessity for construction of storage works to control the floods, retain silt, and provide stored water for the expansion of junior appropriations. Such storage was desired by and was essential to all seven States of the Colorado River Basin. However, the States of the Upper Division (Colorado, Utah, New Mexico and Wyoming) were insistent that they be protected in some manner from the probability that after such storage was provided, appropriations in the Lower Basin would expand so rapidly as to appropriate all of the conserved waters and again forestall the possibility of long-range but slower expansion of uses in the Upper Basin.

(b) In 1921, the seven States of the Colorado River Basin enacted legislation authorizing negotiation of an inter-state compact for the division of the waters of the Colorado River System, and the Congress, by the Act of August 19, 1921 (42 Stat. 171), authorized the participation of a federal representative therein. The negotiations so authorized were undertaken and were carried on at various times from January 26 to November 24, 1922

when the Colorado River Compact, described in later paragraphs of this Answer, was signed.

4.

Comparison of Rights of California and Arizona at the Time of Signature of the Colorado River Compact.

(a) As of the date of signature of the Colorado River Compact, November 24, 1922, complete irrigation distribution systems were in operation and providing service to Palo Verde Irrigation District, Imperial Irrigation District, and the portion of the Yuma Project in California, for a total of approximately 610,000 acres, for which the demand on Colorado River water was not less than 4,500,000 acre-feet per annum. On a comparable basis such works had been completed and were in service along the Colorado River in Arizona for the Parker Project, Yuma Project, and other miscellaneous areas, for a total of 65,000 acres, for which the demand for water from the Colorado River was about 450,000 acre-feet per annum. In addition, works had been constructed in Arizona on the Gila River, a tributary of the Colorado River, requiring an additional 2,000,000 acre-feet per annum.

(b) As of the same date, there were vested appropriative rights, valid under the laws of California, to the beneficial consumptive use of not less than 6,000,000 acre-feet per annum of the waters of the Colorado River System, including those referred to in Paragraph (a) above. The appropriative rights claimed by Arizona were alleged by that State in *Arizona v. California*, 283 U. S. 423, to aggregate 3,900,000 acre-feet per annum, of which a quantity of approximately 3,000,000 acre-feet per annum was alleged to relate to the waters of the Gila River and its tributaries.

B. THE COLORADO RIVER COMPACT.

5.

Signature of Text of Compact.

On November 24, 1922, representatives of the States of Arizona, California, Nevada, Utah, Colorado, New Mexico and Wyoming signed the text of a proposed compact (Appendix 1 to this Answer) to become effective upon ratification by their legislatures and consent of the Congress. This Compact became effective as the Six-State Colorado River Compact June 25, 1929, in the manner hereinafter described, Arizona having rejected and refused to ratify it. Wherever in this Answer the effect of the Six-State Colorado River Compact is pleaded, such effect is that which was reported by the negotiators in their published reports to their legislatures and to the Congress, and which appears in the legislative history of the Boulder Canyon Project Act which granted Congressional consent thereto in modified form.

6.

Text of Compact: Article I: Purposes.

Article I of said Compact states its major purposes to be for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. Article I further provides that to these ends the Colorado River Basin is divided into two Basins, and an apportionment of the

use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

7.

Article II: Definitions.

Article II(a) of said Compact defines the term, "Colorado River System," to mean that portion of the Colorado River and its tributaries within the United States of America. Defendants allege said definition includes, as a necessary part of the Colorado River System, the Gila River and its tributaries. The Gila River rises in New Mexico and flows across Arizona to join the main stream of the Colorado River near Yuma, Arizona.

Article II(b) of said Compact defines the term "Colorado River Basin" to mean all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied. Defendants allege: as so defined, the Colorado River Basin includes all of the areas in the State of California served by the defendants.

Article II(c) of said Compact defines the term "States of the Upper Division" to mean the States of Colorado, New Mexico, Utah and Wyoming.

Article II(d) of said Compact defines the term "States of the Lower Division" to mean the States of Arizona, California and Nevada.

Article II(e) of said Compact defines the term "Lee Ferry" to mean a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

Article II(f) of said Compact defines the term "Upper Basin" to mean those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry. Defendants allege that the term "Upper Basin" as so defined is not identical with the term "States of the Upper Division" as defined in Article II(c), but includes a portion of Arizona, which is not a State of the Upper Division.

Article II(g) of said Compact defines the term "Lower Basin" to mean those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry. Defendants allege that as so defined, the Lower Basin includes all of the areas in the State of California served by the defendants, and all of the drainage area of the Gila River and its tributaries in Arizona. The term "Lower Basin" as so defined is not identical with the term "States of the Lower Division" as defined in Article II(d), but includes portions of Utah and New Mexico, which are not States of the Lower Division.

8.

Article III(a): Apportionments.

Article III(a) of said Compact apportions from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which it states "shall include all water necessary for the supply of any rights which may now exist." Defendants allege: the apportionment in perpetuity effected by Article III(a) of the Colorado River Compact is intended to and does reserve the use of the quantities therein stated from the operation of the laws of appropriation as between the Upper Basin and the Lower Basin. Said apportionment is from the waters of the entire Colorado River System, including the Gila River and its tributaries, and not merely from the virgin flow of the main stream.

The term "consumptive use" is not defined in said Compact, but is defined as "diversions less returns to the river" in Section 4(a) of the Boulder Canyon Project Act (Act of Dec. 21, 1928, 45 Stat. 1057), which statute granted the consent of the Congress to said Compact.

The foregoing definition of "consumptive use" was again employed in the Mexican Water Treaty signed February 3, 1944 (Treaty Series 994), as follows:

> Article I(d): " 'To divert' means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes

evaporation or other losses occurring prior to delivery of said waters at the points of diversion in California.

(g) Said Statutory Compact authorizes California and users therein to presently contract with the United States for the delivery to such users of water stored by the United States, and to receive, appropriate and presently use the same.

(h) Neither the Colorado River Compact nor said Statutory Compact withdraws said excess or surplus waters from present appropriation or use in California, nor prohibits nor prevents the United States from lawfully contracting to deliver, and presently delivering, such excess or surplus waters for present use in California and for permanent service.

(i) California was induced to enact the Limitation Act and thereby accept the offer of a Statutory Compact made by the United States in the Boulder Canyon Project Act by the representation of the United States, known to Arizona, that the said offer and proposed compact had the meaning and intent above alleged.

(j) California has fully performed all obligations of said Statutory Compact on its part to be performed to date, and is entitled to the performance of said Statutory Compact by the United States.

28.

Rights of California as of June 25, 1929.

(a) As of June 25, 1929, the effective date of the Colorado River Compact, the Boulder Canyon Project Act and the Statutory Compact, projects had been constructed and were in operation in California requiring the bene-

whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods."

Article I(h): "'Return flow' means that portion of diverted water that eventually finds its way back to the source from which it was diverted."

Article I(j): "'Consumptive use' means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream."

Such was the commonly accepted meaning of the term at the time of negotiation of the Compact and of the Congressional consent thereto, and was and is the meaning of said term as used throughout said Compact. Beneficial consumptive uses in California and in Arizona were and are intended and required by the Compact to be measured in the identical manner and at the places of use wherever they occur, not in terms of "man-made depletion" of the flow of only the main stream at some lower point. No beneficial consumptive uses at places of use are excepted or exempt from said method of measurement, whether of natural flow or of water salvaged by storage or otherwise in any part of the Basin. The words "per annum" as used in said Compact mean "each year" and not an average of such uses over a period of years.

Uses of the waters of the Gila River and its tributaries under rights which existed as of June 25, 1929, are chargeable first against the apportionment made to the Lower Basin by Article III(a) of the Compact. Such uses in Arizona as of that date aggregated not less than 2,000,000 acre-feet per annum.

ficial consumptive use of more than 4,950,000 acre-feet per annum of the waters of the Colorado River System. Rights to the use of that quantity were part of then vested appropriative rights of the defendants valid under the laws of California, to the beneficial consumptive use of a quantity greatly in excess of 5,362,000 acre-feet per annum of waters of the Colorado River System.

(b) In addition to the projects of the defendants in this action, there are large areas in California readily susceptible of irrigation from the Colorado River System by means of feasible projects for which valid appropriations had been made under the laws of California long prior to the enactment of the Boulder Canyon Project Act. In consequence, however, of the limitation imposed upon California's uses by the said Statutory Compact, California's valid appropriations, which aggregated in excess of eight million acre-feet per annum as of June 25, 1929, were restricted by the formula stated in said Statutory Compact to a basis adequate only to supply the amounts required by the Palo Verde Project, the Colorado River Aqueduct, and the All-American Canal as constructed. The minimum amounts required by these projects for beneficial consumptive use aggregate 5,362,000 acre-feet per annum.

(c) As of June 25, 1929, the comparable statistics relative to Arizona did not differ materially from those alleged in Paragraph 4 of this Answer with reference to the date November 24, 1922.

9.

Article III(b): Permission to the Lower Basin to Increase Its Uses.

Article III(b) of said Compact provides that, in addition to the apportionment made in Paragraph (a) of Article III, the Lower Basin is given the right to increase its beneficial consumptive use of the waters of the Colorado River System by one million acre-feet per annum. Defendants allege: the terms "beneficial consumptive use" and "per annum" as used in Article III(b) have the same meaning as in Article III(a). The first million acre-feet of beneficial consumptive uses above 7,500,000 acre-feet per annum, wherever such uses in the Lower Basin may occur, are encompassed by Article III(b), and said Article III(b) does not relate solely to waters found flowing in the Gila River or any other specific portion of the Lower Basin.

Said Compact contains no provision apportioning the use of water as between Arizona and California or among any States; imposes no restriction or limitation upon the amount which any State may use of the waters apportioned by Article III(a) to the Basin in which such use is made; and imposes no restriction or limitation upon Arizona, California, Nevada, Utah or New Mexico with respect to their respective participations in the increase of beneficial consumptive use permitted to the Lower Basin by Article III(b) of said Compact.

10.

Article III(c): Mexico.

Article III(c) of said Compact provides that if, as a matter of international comity, the United States of America shall recognize in the United Mexican States any right to the use of any waters of the Colorado

River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities "specified" in Paragraphs (a) and (b) of said Article III, and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in Paragraph (d), hereinafter referred to. Defendants allege: neither in said Article III(c) nor in any other provision of the Colorado River Compact is water or the use of water apportioned to the United Mexican States. The obligation assumed in Article III(c) by the States of Colorado, New Mexico, Utah and Wyoming, being the States of the Upper Division, to deliver water to supply one-half of the Mexican deficiency, does not include any obligation on the part of Arizona, with respect to that portion of her territory which is in the Upper Basin, to make such delivery. In the event that a deficiency must be borne by the Lower Basin under Article III(c), the Lower Basin is not required to diminish the uses apportioned to it by Article III(a) unless the additional uses permitted it by Article III(b) shall have been first yielded and shall have proved insufficient to meet the Lower Basin's share of the Treaty requirement.

On April 18, 1945, the Senate of the United States consented, with reservations, to a treaty (Treaty Series 994) with the United Mexican States, and the same was ratified, effective as of November 8, 1945. Defendants allege that the performance of said treaty as to the Colorado River System will require the guaranteed delivery from any and all sources, of 1,500,000 acre-feet of water

per annum at the Mexican boundary, and that said sources are the entire Colorado River System, including the Gila River and its tributaries.

11.

Article III(d): Guarantee by States of the Upper Division.

Article III(d) of said Compact provides that the States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of said Compact. Defendants allege the quantity of 75,000,000 acre-feet specified in Article III(d) bears no quantitative relationship to the beneficial consumptive use of 7,500,000 acre-feet per annum apportioned to either the Upper Basin or Lower Basin by Article III(a).

12.

Article III(e): Reasonable Use.

Article III(e) of said Compact provides that the States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

13.

Article III(f, g): Further Apportionment.

Article III(f) of said Compact provides that further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by Paragraphs III(a), (b), and (c) may be made in the manner provided in Paragraph (g) at any time after October 1, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in Paragraphs (a) and (b) of Article III.

Defendants allege: the provisions of Articles III(f) and III(g) are permissive and not mandatory, and no State has committed itself to enter into such a future compact.

The "further apportionment" referred to in Article III(f) relates only to an apportionment between Basins and then only on mutual consent of all States in both Basins.

Neither Article III(f) nor any other article of the Colorado River Compact prohibits or prevents the United States from presently contracting for the delivery from storage of, or the defendants herein from receiving, appropriating or using, waters surplus to those required to sustain the uses apportioned by Article III(a), nor does it postpone the enjoyment of the use thereof until another interstate compact is made, some time after October 1, 1963, if such a compact is ever made.

Article III(f) postpones the right of either Basin to demand the negotiation of such a compact until after (1) October 1, 1963, and (2) beneficial consumptive uses in the Upper Basin exceed 7,500,000 acre-feet per annum or such uses in the Lower Basin exceed 8,500,000 acre-feet per annum.

Article III(g) provides the mechanics for the calling of a conference and the formulation of a compact for a further apportionment as referred to in Article III(f), subject to legislative ratification thereof by the signatory States and consent by the Congress.

14.

Article VII: Indian Tribes.

Article VII provides that nothing in the Colorado River Compact shall be construed as affecting the obligations of the United States of America to Indian tribes. Defendants allege: all beneficial consumptive uses of water by Indian

tribes pursuant to obligations of the United States to such tribes are chargeable to the beneficial consumptive uses available under the Compact to the Basin, and to the State, in which such uses are situate.

15.

Article VIII: Present Perfected Rights.

Article VIII of said Compact provides that "present perfected rights" to the beneficial use of waters of the Colorado River System are unimpaired by this Compact. Said Article VIII provides further that whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to, and be satisfied from, water that may be stored not in conflict with Article III. Said Article VIII further provides that all other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

Defendants allege: "Unimpaired" as used in this Article means unimpaired as to both the quantity and the quality of the waters to which said perfected rights relate. The Compact does not define the term "present perfected rights." The rights existing in the defendants on and prior to June 25, 1929, are alleged in Paragraph 28 of this Answer.

16.

Article XI: Ratification.

Article XI of the Compact provides that said Compact shall be binding and obligatory when it shall have been

approved by the Legislatures of each of the signatory States and by the Congress of the United States.

17.

Ratification of Seven-state Compact by Six States: 1923.

During the year 1923, the Legislatures of California, Colorado, Nevada, New Mexico, Utah and Wyoming ratified the proposed Colorado River Compact. The Legislature of Arizona rejected it, after first adopting in one house or the other reservations or amendments which, among others, would have provided "That the Gila River System, including the waters of said Gila River and streams tributary thereto, be not included, considered or involved in any way with the so-called Colorado River Compact."

18.

Rejection by Arizona: 1925.

In 1925 the Governor of Arizona formally announced that Arizona elected to rely on the law of appropriation as between States as announced by this Court in *Wyoming v. Colorado*, 259 U. S. 419 (1922), and that Arizona did reject the proposed Colorado River Compact.

19.

Ratification of Six-state Compact: 1925-1929.

Between 1925 and 1929, the Legislatures of California, Colorado, Nevada, New Mexico, Utah and Wyoming enacted legislation reciprocally waiving the provisions of Article XI of the proposed Colorado River Compact (which article made the Compact effective when approved by the Legislatures of seven states), and enacting that said Compact should become effective when six states should have ratified it and the Congress should have given its consent.

C. THE BOULDER CANYON PROJECT ACT AND THE STATUTORY COMPACT BETWEEN THE UNITED STATES AND CALIFORNIA.

20.

Consideration of the Boulder Canyon Project by the Congress.

From April 25, 1922, to December 21, 1928, the Congress gave consideration in hearings and debates to four measures, popularly referred to as the Swing-Johnson bills, for the purpose of ratifying the Colorado River Compact, authorizing the construction of a storage dam on the Colorado River at or near Boulder Canyon, and authorizing the construction of an All-American Canal from the Colorado River to the Imperial and Coachella Valleys.

In the course of these hearings and debates the projects of the defendants as now constructed, and the water requirements of these projects, were thoroughly examined and made known to the Congress, and to all of the States of the Colorado River Basin, and said legislation in its successive stages was formed and adapted to make possible the construction of said projects, to assure them an adequate water supply, and to require said defendants to undertake the repayment of the cost of Hoover Dam and the All-American Canal to that end.

Among the successive steps of legislative consideration a bill was favorably reported by committees in the 70th Congress, passed the House, but was prevented from coming to a vote in the Senate by filibusters of the Arizona Senators in February, 1927, and May, 1928.

Thereupon the Congress enacted the Act of May 28, 1928 (45 Stat. 1011), authorizing the President to ap-

point a Board of Engineers to review the economic and engineering features of the proposed Boulder Canyon Project. The Board, known as the "Sibert Board," reviewed the proposed Boulder Canyon Project, including water requirements of the defendants and of other areas to be served by the said project, and rendered its report, favorable to the project, on December 3, 1928 (H. Doc. 446, 70th Congress, 2d Session; reprinted in H. Doc. 717, 80th Congress, p. A187).

Thereafter the Congress proceeded to the consideration and final passage of the fourth Swing-Johnson bill, which became the Boulder Canyon Project Act (Act of December 21, 1928, 45 Stat. 1057). The full text of this statute appears as Appendix 2 to this Answer. Wherever in this Answer the effect of that Act is pleaded, the construction relied upon is the construction of the Act supported by the legislative history thereof.

21.

Alternative Consent to Seven-state or Six-state Compact by Congress.

The Boulder Canyon Project Act enacted, among other things, the consent of Congress to the proposed Compact signed at Santa Fe, New Mexico, November 24, 1922, either as a seven-state compact, or, in the alternative, as a six-state compact, conditioned, in the latter event only upon the enactment by California of a statute in specified terms; and said Act delegated to the President the power to proclaim at the expiration of six months the effectuation and existence of either the seven-state compact or the

alternative six-state compact, but not both. The language of the statute in this respect reads:

Sec. 4(a). Par. 1: "This Act shall not take effect * * * unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than

one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."

Sec. 13(a). "The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, * * * is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided."

Defendants allege: The term "excess or surplus waters unapportioned by said compact," as so used in said Act, includes the increase of use of 1,000,000 acre-feet per annum permitted to the Lower Basin by Article III(b) of the Colorado River Compact.

22.

Authorization of a Tri-state Agreement.

Section 4(a), Paragraph 2, of the Boulder Canyon Project Act also authorized, but did not require as a condition precedent or otherwise, an agreement among Arizona, Nevada and California, pertaining to the use by said States of water apportioned to the Lower Basin by Article III(a) of the Colorado River Compact and water not apportioned by Article III(a) of said Compact, subject, however, by the terms of Section 8(b) of said Act, to the requirement of further consent of Congress at lea-

if such Agreement should be made after January 1, 1929. Section 8(b) of the Project Act further provided that any Agreement among Arizona, California, or Nevada to which Congress should give its consent after January 1, 1929, should be subject to all contracts made by the Secretary of the Interior under Section 5 of said Act. The Secretary has made such contracts with the defendants, as stated in this First Affirmative Defense.

Paragraph 2 of Section 4(a) contained no reference to the increase of use of 1,000,000 acre-feet per annum specifically permitted to the Lower Basin by Article III(b) of the Colorado River Compact. Rather, in like manner as in Paragraph 1 of said Section 4(a), the proposed Tri-State Agreement suggested an allocation to Arizona of one-half of any excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact, said excess including water referred to in Article III(b) of said Compact as well as other surplus.

The Tri-State Agreement proposed by the second paragraph of Section 4(a) of the Project Act makes no provision for uses by Utah and New Mexico, States which are in part within the Lower Basin.

It has not been ratified by any State.

23.

Legislation by California as to Compact.

The Legislature of California thereafter ratified the proposed Colorado River Compact in the alternative as a seven-state compact or as a six-state compact, whichever the President should proclaim at the end of six months from December 21, 1928. (Calif. Stats. 1929, Ch. 1, p. 1; Stats. 1929, Ch. 15, p. 37; see Stats. 1929, Ch. 16, p. 38, *infra*.)

24.

Enactment by California of Limitation Act.

California, in response to the first paragraph of Section 4(a) of the Boulder Canyon Project Act, on March 4, 1929, enacted the following statute (Stats. 1929, Ch. 16, p. 38; hereinafter referred to as the California Limitation Act, Appendix 3 to this Answer) to become effective only upon the ratification of the Colorado River Compact by six States, and its non-ratification by the seventh State (Arizona) within six months from December 21, 1928, and proclamation of the latter event by the President:

> "An act to limit the use by California of the waters of the Colorado river in compliance with the act of Congress known as the 'Boulder Canyon Project Act,' approved December 21, 1928, in the event the Colorado River compact is not approved by all of the states signatory thereto.
>
> "The people of the State of California do enact as follows:
>
> "Section 1. In the event the Colorado river compact signed at Santa Fe, New Mexico, November 24, 1922, * * * is not approved within six months from the date of the passage of that certain act of the Congress of the United States known as the 'Boulder Canyon Project Act,' approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado river compact, then when six of said states, including California, shall have ratified and approved said compact, and shall have consented to waive the

provisions of the first paragraph of article eleven of said compact which makes the same binding and obligatory when approved by each of the states signatory thereto, and shall have approved said compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said 'Boulder Canyon Project Act,' the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming as an express covenant and in consideration of the passage of the said 'Boulder Canyon Project Act' that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado river for use in the State of California including all uses under contracts made under the provisions of said 'Boulder Canyon Project Act,' and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph 'a' of article three of the said Colorado river compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

"Sec. 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4(a) of the said 'Boulder Canyon Project Act' and this act shall be so construed."

25.

Proclamation of Six-state Compact by President.

On June 25, 1929 the President of the United States proclaimed that (a) seven States had not ratified the Colorado River Compact within six months from the date of the approval of the Boulder Canyon Project Act, but that (b) six states (including California) had ratified said compact and consented to waive the provisions of Article XI thereof requiring seven-state approval, as prescribed in Section 13(a) of the Boulder Canyon Project Act; (c) that California had met the requirements set out in the first paragraph of Section 4(a) of the Boulder Canyon Project Act necessary to render said act effective on six-state approval of said compact, and (d) all prescribed conditions having been fulfilled, the Boulder Canyon Project Act was effective June 25, 1929. (Appendix 4 to this Answer, 46 Stat. 3000.)

26.

Legislation by Arizona as to Compact.

On February 24, 1944, the Legislature of Arizona enacted a statute entitled "An Act ratifying the Colorado River Compact; and declaring an emergency." (Sess. L. Ariz. 144, pp. 427-428.) The effect of said statute is referred to in Paragraph 59 of the Traverse in this Answer.

27.

Statutory Compact.

(a) The Boulder Canyon Project Act offered to California, and California by its Limitation Act accepted, a Statutory Compact between the United States and Cali-

fornia, on the basis of the interpretations of the Colorado River Compact, the Boulder Canyon Project Act, and the proposed Statutory Compact appearing in the legislative history of the Boulder Canyon Project Act; and said Statutory Compact is now in existence, subject to the terms of the six-state Colorado River Compact.

(b) Arizona has acquiesced in and does by the present action acquiesce in the existence of said Statutory Compact.

(c) Said Statutory Compact authorizes the United States to contract to deliver, and to presently deliver, water from storage to users in California up to the full quantities stated in said Statutory Compact.

(d) Said quantities comprise the aggregate annual beneficial consumptive use of not to exceed:

(1) Four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus

(2) One-half of all excess or surplus waters not apportioned by Article III(a) of the Colorado River Compact, including in said excess or surplus the waters referred to in Article III(b) of said Compact.

(e) The waters so delivered by the United States are for permanent service and available, among other purposes, for the supply of any rights which existed in California as of June 25, 1929.

(f) Said Statutory Compact does not provide for the reduction of said quantities in consequence of reservoir,

D. DEFENDANTS' WATER CONTRACTS WITH THE SECRETARY OF THE INTERIOR EXECUTED PURSUANT TO THE AUTHORITY OF THE BOULDER CANYON PROJECT ACT AND THE STATUTORY COMPACT.

29.

The Boulder Canyon Project Act: Authorization for Construction and Repayment Contracts: Sections 1 and 4(b).

Section 1 of the Boulder Canyon Project Act (Act of December 21, 1928; 45 Stat. 1057; Appendix 2 to this Answer) authorized the construction of Hoover Dam and the All-American Canal.

Section 4(b), Paragraph 2, of said Act established the following conditions precedent to the construction of the All-American Canal:

> "Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law."

To comply with the foregoing conditions, the defendants Imperial Irrigation District, and later Coachella Valley County Water District and City of San Diego, entered into contracts with the United States, described in

subsequent paragraphs of the First and Second Affirmative Defenses for the repayment of the cost of the Imperial Dam and All-American Canal.

30.

Section 5: Authorization for Water Delivery Contracts.

Section 5, Paragraph 1, of said Act authorized the Secretary of the Interior to contract for the storage and delivery of water, and for the disposition of electric energy, in the following terms:

> "That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy * * * upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

Contracts under the said Act for delivery of water from storage were entered into between the United States and each of the defendants (except the City of Los Angeles and County of San Diego), as set forth in subsequent paragraphs of this First Affirmative Defense.

31.

Section 6: Utilization of the Hoover Dam Reservoir.

Section 6, Paragraph 1, governing the use of Hoover Dam and reservoir, provided in part as follows:

> "That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power * * *"

32.

Seven-party Agreement.

On August 18, 1931, pursuant to request of the Secretary of the Interior, representatives of the defendants other than the State of California, signed an agreement (referred to as the "Seven-Party Agreement," Appendix 10 to this Answer) fixing the relative priorities of the defendants in water available to California under the Colorado River Compact and the Statutory Compact, which they thereafter ratified (H. Doc. 717, 80th Cong., p. A479), and which the Division of Water Resources of the State of California approved and recommended to the Secretary of the Interior as a uniform schedule of priorities to be included in all contracts for the storage and delivery of water of the Colorado River System into which said Secretary might enter with users in California.

33.

General Regulations.

On September 28, 1931, the Secretary of the Interior promulgated amended general regulations (H. Doc. 717, 80th Cong., p. A487), incorporating in Article 6 thereof

the aforesaid schedule of priorities. The said regulations are now in full force and effect with respect to the delivery of water from storage for use in California. Their full text appears as Appendix 8 to this Answer, and the effect of the schedule of priorities therein contained is tabulated below:

Priority No.	Agency and description	Annual quantity in acre-feet (beneficial consumptive use)
1	Palo Verde Irrigation District—104,500 acres in and adjoining existing district	
2	Yuma project (California division)—not exceeding 25,000 acres	
3	(a) Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by All-American Canal	3,850,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
4	Metropolitan Water District and/or City of Los Angeles	550,000
5	(a) Metropolitan Water District and/or City of Los Angeles	550,000
	(b) City and/or County of San Diego	112,000
6	(a) Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by All-American Canal	300,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
		5,362,000
7	Agricultural use in the Colorado River Basin in California, as designated on Map 23000, U. S. Bureau of Reclamation	All remaining water available for use in California

34.

Contracts for Delivery of Water to the Defendants.

Pursuant to the aforesaid statutory authority and in accordance with the aforesaid regulations, the United States has entered into contracts severally with the defendants, Metropolitan Water District of Southern California, City of San Diego, Palo Verde Irrigation District, Imperial Irrigation District and Coachella Valley County Water District, for the delivery to them at stated points of diversion of water from storage for beneficial consumptive use in California, in the quantities and in accordance with the priorities stated in said regulations, subject to the availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act. Said contracts are for permanent and continuous service. The full text of each of said contracts appears as an Appendix to this Answer, and is incorporated herein by reference as though here fully stated. Each of said defendants has performed and is performing all obligations of all of its contracts with the United States to be performed by said defendant to date, and is entitled to performance of said contracts by the United States.

The said contracts, together with contracts related thereto, are identified below by reference to dates, parties, subject matter and the numbers they bear in the Appendix to this Answer:

DATE	PARTIES	SUBJECT MATTER	APPENDIX NO.
	Palo Verde Project Contract		
February 7, 1933	United States and Palo Verde Irrigation District	Water Delivery Contract	No. 11
	All-American Canal Contracts		
October 23, 1918	United States and Imperial Irrigation District	Laguna Dam Repayment Contract	No. 12
December 1, 1932	United States and Imperial Irrigation District	All-American Canal Water Delivery and Repayment Contract	No. 13
February 14, 1934	Imperial Irrigation District and Coachella Valley County Water District	Agreement of Compromise	No. 14
October 2, 1934	United States and City of San Diego	San Diego Participation in the All-American Canal	No. 15
October 15, 1934	United States and Coachella Valley County Water District	All-American Canal Water Delivery and Repayment Contract	No. 16
December 22, 1947	United States and Coachella Valley County Water District	Coachella Valley Distribution System Construction Contract	No. 17
March 4, 1952	United States and Imperial Irrigation District	All-American Canal Operation and Maintenance Contract	No. 18

DATE	PARTIES	SUBJECT MATTER	APPENDIX NO.
	Colorado River Aqueduct Contracts		
April 24, 1930	United States and Metropolitan Water District of Southern California	Water Delivery Contract	No. 19
April 26, 1930	United States and Metropolitan Water District of Southern California	Contract for Power to Pump Water	No. 20
September 28, 1931	United States and Metropolitan Water District of Southern California	Amended Water Delivery Contract	No. 21
February 10, 1933	United States and Metropolitan Water District of Southern California	Parker Dam Co-Operative Contract	No. 22
February 15, 1933	United States and City of San Diego	Water Delivery Contract	No. 23
October 4, 1946	United States, Metropolitan Water District of Southern California, and San Diego City and County	Merger of San Diego Water Delivery Contract	No. 24
October 17, 1945	United States and City of San Diego	Repayment Contract for San Diego Aqueduct	No. 25
March 14, 1947	City of San Diego and Metropolitan Water District of Southern California	Assignment	No. 26
April 1, 1952	United States and San Diego County Water Authority	Repayment Contract, Second Barrel, San Diego Aqueduct	No. 27

35.

Rights of Palo Verde Irrigation District, Imperial Irrigation District, and Coachella Valley County Water District to Delivery of Water by the United States.

Defendants, Palo Verde Irrigation District, Imperial Irrigation District, and Coachella Valley County Water District are entitled, by virtue of their aforesaid contracts with the United States, to the delivery from storage of so much water as may be necessary to enable them and the lands within the Yuma Project in California to make aggregate annual beneficial consumptive use (diversions less returns to the river) in California of not less than 4,150,000 acre-feet per annum, subject to the availability thereof under the Colorado River Compact and the Boulder Canyon Project Act, with relative priorities as stated in Article 6 of said regulations dated September 28, 1931 (Appendix 8 to this Answer), being the aggregate of priorities 1, 2, 3 and 6 therein stated; and further subject, as between Imperial Irrigation District and Coachella Valley County Water District, to the "Agreement of Compromise" between them dated February 14, 1934, appearing as Appendix 14 to this Answer.

36.

Right of Metropolitan Water District to Delivery of Water by the United States.

The Metropolitan Water District of Southern California is entitled, by virtue of its aforesaid contracts with the United States, and of assignment to said District of rights of the City of San Diego theretofore held under contract between said City and the United States, to the delivery from storage of so much water as may be necessary to enable said District to make aggregate annual beneficial consumptive use (diversions less returns to the river) in

California of 1,212,000 acre-feet per annum, subject to the availability thereof under the Colorado River Compact and the Boulder Canyon Project Act, with relative priorities as stated in Article 6 of said regulations dated September 28, 1931 (Appendix 8 to this Answer), being the aggregate of priorities 4 and 5 therein stated.

37.

Seniority of California Contracts.

The said contracts between the United States and each of the defendants vests in said defendants, respectively, a right in accordance with the terms of said contracts to the delivery from storage of water of the Colorado River System for beneficial consumptive use in the respective quantities hereinabove alleged. Said contract rights, severally and collectively, are senior in time and right to any and all rights which may exist by virtue of contracts between the United States and any other parties for the delivery of water from Hoover Dam storage to, or for use in, Arizona, with the partial exception of contracts, if any, made with the Yuma Project in Arizona relating to such rights as that project may have owned prior to the construction of Hoover Dam. The aggregate of the quantities of water which the United States has agreed in said contracts, subject to availability under the Colorado River Compact and the Boulder Canyon Project Act, to deliver to the defendants from storage is the quantity required to enable them to make aggregate annual beneficial consumptive use (diversions less returns to the river) in California of 5,362,000 acre-feet. There are so available for delivery from storage by the United States, and for receipt and beneficial consumptive use by the defendants, quantities of water in excess of that amount.

SECOND AFFIRMATIVE DEFENSE

Arizona Is Estopped and Precluded From Asserting the Interpretations of the Colorado River Compact, the Statutory Compact, and the Defendants' Contracts Alleged in the Bill of Complaint

38.

All of the allegations of the First Affirmative Defense heretofore stated are referred to and made a part hereof as though fully set out.

39.

Ratification by California of the Statutory Compact in Reliance Upon Its Contemporaneous Interpretation.

(a) California ratified the Colorado River Compact as a Six-state Compact and entered into the Statutory Compact with the United States, in reliance upon the interpretations and contemporaneous construction of the Colorado River Compact appearing in the published reports of the negotiators thereof to their Legislatures, and in the legislative history of the Boulder Canyon Project Act, which Act evidenced the offer to California of said Statutory Compact and the consent of Congress to said Six-state Colorado River Compact, conditioned upon the acceptance by California of both. Said interpretations and contemporaneous construction of the Colorado River Compact and the Statutory Compact were those stated in paragraphs 6 to 16, inclusive, and 27 of the First Affirmative Defense of this Answer.

(b) California entered into the Statutory Compact by enacting the Limitation Act to comply with the stated condition for the effectuation of a Six-state Compact only because of Arizona's rejection of the Colorado River Compact as a seven-state Compact and her refusal to ratify the

same within the six-month period specified in Section 4(a) of the Boulder Canyon Project Act, and not as an inducement to Arizona to ratify said Compact. If Arizona had so ratified within said six-month period, the California Limitation Act by its terms would not have taken effect.

(c) By acceptance of the Statutory Compact with the United States heretofore alleged, California sustained serious and substantial detriment, (i) in the limitation of her beneficial consumptive uses to an aggregate amount which is less than that to which her valid appropriations entitled her and less than the quantity which she was otherwise entitled to use under the Colorado River Compact; and (ii) in the classification of such uses under the Colorado River Compact.

(d) The interpretations of the Colorado River Compact and Boulder Canyon Project Act asserted by Arizona in the present action are in contravention of each of the interpretations of said documents above alleged, in reliance upon which California entered into said Statutory Compact.

40.

Litigation.

(a) On October 13, 1930, Arizona instituted an action in this Court (*Arizona v. California, et al.*, 283 U. S. 423 (1931)), to enjoin the construction of the Hoover Dam and All-American Canal, to declare the Boulder Canyon Project Act unconstitutional, and to invalidate the Colorado River Compact. In that action Arizona by its pleadings and briefs represented to this Court that the Colorado River Compact and the Statutory Compact bore

interpretations generally consistent with those stated in the First Affirmative Defense of this Answer, and alleged that Arizona had refused to ratify the Colorado River Compact for the reason that the Compact did have that meaning. Said representations are reprinted in Appendix 28 to this Answer. The representations of Arizona to the Court in that case are inconsistent with the interpretations now alleged by Arizona in the Bill of Complaint in the present cause.

(b) On February 14, 1934, Arizona moved for leave to file in this Court a bill to perpetuate the testimony of the negotiators of the Colorado River Compact. (*Arizona v. California, et al.*, 292 U. S. 341 (1934).) This Court denied the motion for leave to file; the Opinion rejected Arizona's claim that the Colorado River Compact "means that the waters apportioned by Article III(b) of said Compact are for the sole and exclusive use and benefit of the State of Arizona."

(c) In October, 1935, Arizona filed in this Court a motion for leave to file a Bill of Complaint against the States parties to the Six-state Colorado River Compact praying an equitable apportionment, which motion was denied. (*Arizona v. California*, 298 U. S. 558 (1936).)

(d) In not one of the three cases above referred to did Arizona challenge the validity under the Boulder Canyon Project Act, the Colorado River Compact, or the Statutory Compact, of the water delivery contracts entered into between the Secretary of the Interior and the defendants, nor the right of the United States to presently and permanently deliver, and the defendants to presently and permanently use, one-half of the excess or surplus waters unapportioned by said Compact.

41.

Legislative and Administrative Construction of Statutory Compact.

(a) The capacities of the Colorado River Aqueduct and All-American Canal were fully known to the executive departments of the United States and to the Congress and were approved by them, and were fully known to Arizona, and said works were constructed to said capacities, before the interpretations now asserted by Arizona were disclosed. Thus:

(i) The first water delivery contract of The Metropolitan Water District of Southern California with the United States, dated April 24, 1930 (Appendix 19 to this Answer), was accompanied by one between the same parties dated April 26, 1930 (Appendix 20 to this Answer), which obligated that District for 36% of the firm energy to be produced by Hoover Dam for 50 years, to be paid for whether used or not, but to be used solely for pumping the said water into and in the Colorado River Aqueduct in accordance with said water delivery contract. This obligation amounted to a minimum of $75,000,000. Both contracts by their terms were contingent upon the making of necessary appropriations by the Congress for the construction of Hoover Dam, and the power contract by its terms was not to take effect until the first such appropriation was made. Both contracts were reported by the Secretary of the Interior to the Congress in support of the first appropriation for construction of Hoover Dam, were fully considered by the Congress, and the first appro-

priation was made in the Act of July 3, 1930, 46 Stat. 860, Ch. 846, with the knowledge and approval of Congress of the administrative construction of the Colorado River Compact and the Boulder Canyon Project Act evidenced by the execution of said contracts. Arizona opposed said legislation but did not therein disclose the present contentions of that State.

(ii) In the Act of June 18, 1932, 40 Stat. 324, the Congress granted a right-of-way to the Colorado River Aqueduct across lands of the United States, this being required because the capacity of the aqueduct was in excess of that contemplated by then existing general right-of-way legislation.

(iii) By the Act of August 30, 1935, 49 Stat. 1039, the Congress authorized the Parker Dam Project and ratified all contracts and agreements which had been executed in connection therewith. Such contracts and agreements included, (1) the contract between the United States and the defendant The Metropolitan Water District of Southern California for the financing and construction of Parker Dam as a diversion dam for the Colorado River Aqueduct (Appendix 22), (2) the Water Delivery Contract amended as of September 28, 1931 (Appendix 21), and (3) the Power Contract (Appendix p. 20).

(iv) The capacity of the All-American Canal was not only known to the Congress but was calculated, designed and built by the United States to carry the full quantities of water which it had agreed to deliver to Imperial Irri-

gation District, Coachella Valley County Water District, lands of the Yuma Project in California, and City of San Diego, as heretofore alleged. Such capacity, and the progress of construction, were reported to the Congress during the consideration of more than twenty appropriation Acts between the years 1934 and 1952, and money was appropriated by the Congress in knowledge and approval thereof.

(b) The interpretations of the Colorado River Compact, the Statutory Compact, and the contracts of the defendants with the United States, now asserted by Arizona are in contravention of the interpretations of said documents known to and relied upon by both the Congress and defendants in the enactment of the foregoing legislation and the construction of works thereunder.

42.

Arizona Is Estopped to Assert Her Present Interpretations of the Colorado River Compact, Statutory Compact, and Contracts Executed Pursuant Thereto.

(a) Arizona did not officially assert any other or different interpretations of the Colorado River Compact or the Boulder Canyon Project Act than those alleged in the three actions in this Court above cited, until 1944.

(b) During the period between 1929 and February 24, 1944, in reliance upon the interstate contractual and compact relationship which resulted from Arizona's rejection of the Colorado River Compact, as described in the First Affirmative Defense, and in reliance upon the interpreta-

tions advanced by Arizona as reasons for rejecting ratification of the said Compact, the defendants herein underwrote the cost of Hoover Dam and the All-American Canal, constructed the Colorado River Aqueduct, and proceeded with the costly works and entered into the contracts and financial obligations elsewhere in this Answer described, and have developed an economy dependent thereon and have irrevocably changed, to defendants' detriment, their respective positions. Arizona is now estopped to assert interpretations of the Colorado River Compact and the Statutory Compact inconsistent with and more favorable to Arizona and detrimental to defendants than were her earlier representations and interpretations as herein alleged, and upon which the defendants herein, and Congress and the executive officers of the United States, relied in enacting legislation and entering into contracts, constructing projects and incurring obligations as herein alleged.

(c) If Arizona now claims that said Statutory Compact confers rights upon her, then said State is obligated to accept and is estopped to deny the interpretations of said Compact placed upon it by the United States and California, the parties thereto, as such interpretations are evidenced by its legislative history and by the legislative and administrative construction thereof as pleaded in this Answer.

THIRD AFFIRMATIVE DEFENSE.

Defendants Have Appropriative Rights to the Beneficial Consumptive Use of Not Less Than 5,362,000 Acre-feet of Colorado River System Water per Annum, Senior to the Claims Made by Arizona in the Bill of Complaint.

43.

All of the allegations of the First and Second Affirmative Defenses heretofore stated are referred to and made a part of this Third Affirmative Defense as though fully here set out.

44.

Appropriations of California's Agricultural Areas.

(a) Defendant Palo Verde Irrigation District includes within its boundaries approximately 120,500 acres. Appropriations under the laws of California were duly and regularly made July 17, 1877, and amended and supplemented on subsequent dates, for the use of 3800 cubic feet per second of the waters of the Colorado River System for the irrigation of all of said area and domestic and other purposes therein by the predecessors in interest of said District. Said appropriations have been duly conveyed to said District and are now owned by it. Water was first diverted from the Colorado River System and used within said area under said appropriations in the year 1877 and has been continuously so used since that date. Defendant District, its predecessors and the property owners within said District have constructed works to divert and use said waters, and said works are now in operation. Said District, its predecessors and property owners have at all times exercised due diligence to put to beneficial use the full quantity of water so appropriated.

(b) The Yuma Reclamation Project, lying principally in the State of Arizona, includes within its boundaries approximately 25,000 acres in California. Said 25,000 acres is comprised in part of lands in Indian reservations created by the Act of March 3, 1865 (13 Stat. 559), and diversion of water for all of said 25,000 acres was authorized by the Act of April 21, 1904 (33 Stat. 189). Appropriations under the laws of California were duly and regularly made July 8, 1905, for the use of waters of the Colorado River System for the irrigation of all of said area, and domestic and other purposes within said area, as well as in Arizona, by the Secretary of the Interior. Water was first diverted from the Colorado River System and used within said area in California under said appropriations in the year 1910 and has been continuously so used since that date. The Secretary of the Interior and the owners of said lands in California have at all times exercised due diligence, and are now exercising due diligence, to put to beneficial use the full quantity of water so appropriated for use in California.

(c) Defendant Imperial Irrigation District presently includes within its boundaries approximately 900,000 acres and is committed to include 90,000 acres in addition. Appropriations under the laws of California were duly and regularly made in 1893, amended and supplemented on subsequent dates, for the use of 10,000 cubic feet per second of the waters of the Colorado River System for irrigation of all of said areas and other areas and domestic and other purposes therein by the predecessors in interest of said District. Said appropriations were duly conveyed to said District and are now owned by it. Water was first diverted from the Colorado River System and used within said areas under said ap-

propriations in the year 1901 and has been continuously so used since that date. Defendant District, its predecessors and the property owners within said District have constructed works to divert and use said waters for said purposes and said works are now in operation. Said District, its predecessors and property owners have at all times exercised due diligence, and are now exercising due diligence, to put to beneficial use the full quantity of water so appropriated.

(d) Defendant Coachella Valley County Water District includes within its boundaries 278,000 acres. Appropriations under the laws of California were duly and regularly made in the year 1893, and amended and supplemented on subsequent dates, for the use of waters of the Colorado River System for irrigation of all of said area and domestic and other purposes therein by the predecessors in interest of said District. Water was first diverted from the Colorado River System and used within said area under said appropriations in the year 1948 and has been continuously so used since that date. Defendant District, its predecessors and the property owners within said District have constructed works to divert and use said waters, and said works are now in operation. Said District, its predecessors and property owners have at all times exercised due diligence, and are now exercising due diligence, to put to beneficial use the full quantity of water so appropriated.

(e) Under the laws of California the defendants Palo Verde Irrigation District, Imperial Irrigation District,

Coachella Valley County Water District, and the defendant State of California as *parens patriae* for the lands within the Yuma Project in California, were, prior to June 25, 1929, entitled to make beneficial consumptive use (diversions less returns to the river) in California of an aggregate quantity of water greatly in excess of 4,150,000 acre-feet per annum, and since that date, have been, and now are, entitled to make such use of an aggregate quantity of water of not less than 4,150,000 acre-feet per annum, all of which is reasonably required for the service of their inhabitants and lands. The relative priorities of defendants are controlled by an agreement among them dated August 18, 1931 (Appendix 10 to this Answer), supplemented as to defendants Imperial Irrigation District and Coachella Valley County Water District by an Agreement of Compromise dated February 14, 1934 (Appendix 14 to this Answer).

45.

Appropriations of The Metropolitan Water District of Southern California, City of Los Angeles, and City of San Diego.

(a) Defendant City of Los Angeles is one of the cities the corporate area of which is included within The Metropolitan Water District of Southern California. Appropriations under the laws of California were duly and regularly made June 28, 1924, and amended and supplemented on subsequent dates, for the use of 1500 cubic feet per second of waters of the Colorado River System for municipal and other purposes within said area by said City.

Construction of works for such purpose had commenced in 1923. In 1928, to facilitate the service of said waters to areas on the coastal plain of Southern California, the City joined with other public agencies in the organization of The Metropolitan Water District of Southern California.

(b) Defendant City of San Diego is one of the cities the corporate area of which is included within The Metropolitan Water District of Southern California. A portion of the defendant County of San Diego is also within said District. Appropriations under the laws of California were duly made April 15, 1926 by The City of San Diego, and amended and supplemented on subsequent dates, for the use of 155 cubic feet per second of the waters of the Colorado River System for municipal and other purposes within the defendants, the City of San Diego and the County of San Diego. On June 9, 1944, to facilitate the service of said waters within said City and said County, said City joined with other public agencies within said County in the organization of the San Diego County Water Authority, and on December 17, 1946, the area within said Authority was annexed to and became a part of The Metropolitan Water District of Southern California. On October 4, 1946, by agreement among said City, County, Authority and District, the rights of said City, County and Authority, including those hereinabove described, were transferred to and merged with those of The Metropolitan Water District of Southern California. (Appendix 24 to this Answer.)

(c) Defendant The Metropolitan Water District of Southern California includes within its boundaries the corporate areas of 48 cities, districts, and other entities on the coastal plain of Southern California. Appropriations under the laws of California were duly and regularly made as aforesaid on June 28, 1924, and April 15, 1926, for the use of waters of the Colorado River System for municipal and other purposes by the cities of Los Angeles and San Diego and are now administered by The Metropolitan Water District of Southern California. After its incorporation, and for the purpose of consolidating and taking in its own name, filings theretofore made by the City of Los Angeles, the defendant Metropolitan Water District in 1929 and 1930 filed applications for the appropriation of waters of the Colorado River System, which applications have been amended from time to time and were and are filings upon and appropriations inclusive of the water of the Colorado River designated in said notices of appropriation theretofore filed by the defendant City of Los Angeles. Water was first diverted from the Colorado River System and used within said area in 1941 under said appropriations and has been continuously so used since that date.

(d) Defendants, Metropolitan Water District of Southern California, City of Los Angeles, and City of San Diego have constructed works to divert and use said waters, and said works are now in operation. Said defendants have at all times exercised due diligence, and are now exercising due diligence, to put to beneficial use

the full quantity of water so appropriated. Under the laws of California, the said defendants were on June 25, 1929, and now are, entitled under said appropriations to divert and to make beneficial consumptive use (diversions less returns to the river) in California of not less than 1,212,000 acre-feet per annum of the waters of the Colorado River System, all of which is reasonably required for the service of the inhabitants and lands within said District.

46.

Total Appropriations of Defendants.

Prior to June 25, 1929, the defendants herein and other appropriators in California were vested with valid appropriative rights entitling said defendants to the beneficial consumptive use (diversions less returns to the river) in California, of an aggregate quantity of water greatly in excess of 5,362,000 acre-feet per annum; and since that date defendants have been, and now are, vested with valid appropriative rights entitling said defendants to such use of an aggregate quantity of water not less than 5,362,000 acre-feet per annum. Said rights were on said date, and are, within, protected by, and capable of being satisfied from the uses provided for California by the Statutory Compact between California and the United States described in the First Affirmative Defense of this Answer.

All of said quantity can be put to beneficial consumptive use by means of works heretofore constructed and now

substantially complete and in operation, and is reasonably required by the defendants for the service of their inhabitants and lands.

47.

California's Appropriations Are Senior to Arizona's

(a) All of the appropriations of each of the defendants above alleged are senior in time and right to all appropriations made for the use of waters of the Colorado River System in Arizona, with the partial exception of (1) certain beneficial consumptive uses, the quantities being unknown to the defendants, of the Yuma Project in Arizona, the Colorado River Indian Reservation, and small miscellaneous uses from the main stream and tributaries other than the Gila River, and (2) beneficial consumptive uses of approximately 2,000,000 acre-feet per annum of the waters of the Gila River and its tributaries.

(b) The only appropriation or appropriations made for the use of water from the Colorado River System for the Central Arizona Project referred to in the complaint herein were initiated in the year 1951, and are junior in time and right to all the rights of defendants as hereinbefore alleged.

(c) The claims to the use of water asserted by Arizona in its bill of complaint would require the further curtailment of said senior appropriations in California for the benefit of said junior appropriations in Arizona, for projects in the inceptive and formative stage and lacking economic feasibility.

FOURTH AFFIRMATIVE DEFENSE

The United States Is an Indispensable Party

48.

All of the allegations of the three preceding Affirmative Defenses heretofore stated are referred to and made a part of this Fourth Affirmative Defense as though fully here set out.

49.

The United States of America is an indispensable party to this action, and the United States of America is not sued herein and has not given its final consent to be sued.

50.

On December 31, 1952, the United States of America moved this Court for leave to intervene in the above entitled cause and for leave to file a petition for intervention, and on January 19, 1953, this Court granted said motion. Upon the filing by the United States of America of the Petition for Intervention, and upon the United States of America becoming finally committed to be bound by any decree or judgment rendered by this Court in the above entitled cause, defendants herein will withdraw this Fourth Affirmative Defense.

TRAVERSE

Come now the defendants and admit, deny and allege:

51.

(a) Answering Paragraph IV(a) and (b) of said Complaint, admit that the mileages therein stated are approximately correct.

(b) Answering Paragraph IV(c) of said Complaint, admit that the mileages therein stated are approximately correct, and deny all the other allegations of said paragraph.

52.

Answering Paragraph V of the said Bill of Complaint, deny the allegations of said paragraph, except as such allegations conform to the facts set out in Paragraphs 3, 5, and 17-27 inclusive of the First Affirmative Defense and Paragraph 59 of this Traverse.

53.

Answering Paragraph VII of said Complaint, deny that any apportionment of the beneficial consumptive use of water is made by any other part of Article III of the Colorado River Compact than Paragraph (a) of said Article III. Deny that the pertinent provisions of said Article III of the Compact are correctly set out in said Paragraph VII and allege that they are correctly set out in Appendix 1 to this Answer.

54.

Answering Paragraph VIII of said Complaint, deny the allegations of said paragraph, except as such allega-

tions conform to the facts set out in the First and Second Affirmative Defenses and Paragraph 59 of the Traverse of this Answer.

55.

Answering Paragraph IX(c) of said Complaint, deny the allegations of said paragraph and allege that the provisions of Section 13(a) of the Boulder Canyon Project Act are correctly set out in Appendix 2 to this Answer.

56.

(a) Answering Paragraph X(a) of said Complaint, allege that the only conditions precedent established by Section 4(a) of the Project Act were established by the first paragraph of said Section 4(a).

(b) Answering Paragraph X(b) of said Complaint, allege that the proclamation referred to is set out in Appendix 4 to this Answer.

57.

(a) Answering Paragraph XI(a) of said Complaint deny the allegations of said paragraph, except as such allegations conform to the facts set out in the First Affirmative Defense of this Answer.

(b) Answering Paragraph XI(b) of said Complaint, admit the execution and existence of the Seven-Party Priority Agreement therein referred to, but deny that the purpose thereof was solely to determine the quantities of Colorado River water which the contracting defendants were entitled to receive and allege that the purpose of said Seven-Party agreement was to determine the relative priorities of said defendants in the beneficial consumptive use of water available for use in California, under the Colorado River Compact and the Statutory Compact be-

tween the United States and California. Deny all other allegations of said Paragraph XI(b).

(c) Answering Paragraph XI(c) of said Complaint, allege that the quotation therein made is partial, allege that the effect of the contracts therein referred to can be determined only by consideration of the complete texts thereof, respectively, and allege that said complete texts are annexed to this Answer as Appendixes, suitably identified.

(d) Answering the allegations of Paragraph XI(d) of said Complaint, deny the allegations of said paragraph, except that defendants admit that, by the terms of the Statutory Compact evidenced by the Boulder Canyon Project Act and the California Limitation Act, the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of said Boulder Canyon Project Act and all water necessary for the supply of any rights which existed as of June 25, 1929, shall not exceed 4,400,000 acre-feet of the waters apportioned to the Lower Basin by Paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by Article III(a) of said Compact, such uses always to be subject to the terms of said Compact, and allege that defendants lawfully own the right to use said quantities on said terms.

Allege that the quantities of excess or surplus water unapportioned by Article III(a) of the Colorado River Compact are such that the portion thereof which is now available and which will continue to be available to California under said Statutory Compact for beneficial con-

sumptive use in California is not less than one million acre-feet per annum.

58.

(a). Answering Paragraph XII(a) of said Bill of Complaint, deny the allegations of said paragraph, except as such allegations conform to the facts set out in the First Affirmative Defense of this Answer and Exhibits A and C hereto. Allege that construction of Hoover Dam commenced September 17, 1930, that said Dam commenced the storage of water February 1, 1935, that said Dam commenced power operation June 1, 1937, and that the maximum storage capacity of the reservoir (Lake Mead) created thereby is approximately 30,000,000 acre-feet. Allege that construction of Parker Dam was authorized on August 30, 1935, by the Rivers and Harbors Act of 1935 (49 Stat. 1039; Appendix 5 to this Answer). Allege that Davis Dam was constructed to perform functions under the Mexican Water Treaty and for other purposes.

(b) Answering Paragraph XII(b) of said Complaint, admit that the facilities therein referred to were constructed for one or more of the purposes therein stated in connection with waters of the Colorado River System, but not solely the main stream of the Colorado River, and allege that said facilities are governed by, and must be maintained, operated and administered in conformity with the Boulder Canyon Project Adjustment Act (Act of July 19, 1940, 54 Stat. 774), the Mexican Water Treaty signed February 3, 1944 (Treaty Series 994), with II reservations thereto appended by the Senate of the United States and protocol dated November 14, 1944, the Reclamation Law and other laws, as well as in conformity with

the laws mentioned in said Paragraph XII(b) of the Bill of Complaint.

(c) Answering Paragraph XII(c) of said Complaint, deny, except as herein expressly admitted or alleged, all the allegations of said paragraph. Allege that, through the operation of the facilities mentioned in said Paragraph XII(c) and other facilities, California and its water users may make aggregate annual beneficial consumptive use (diversions less returns to the river) of water of and from the Colorado River System in the amount of four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin States by Paragraph "a" of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by Article III(a) of said Compact, and have a right to do so, and such right is not in contravention of the Colorado River Compact or the Statutory Compact between the United States and California, and allege that the quantity of such excess or surplus waters is such that the portion thereof available for present and continuing beneficial consumptive use in California is in excess of one million acre-feet per annum. Allege that the designed capacity of said facilities was intended to be and will (taking into consideration the seasonal fluctuations of demand for beneficial consumptive use of water in California and usual and proper operating practices), make possible the aggregate annual beneficial consumptive use of Colorado River System water in California in the quantity of approximately 5,362,000 acre-feet. Allege that such claim is rightful and that California and its water users are lawfully entitled to, and own the right to, use said quantity of said water annually on the terms stated in said Statutory Compact.

(a) Answering Paragraphs XIII(a) and (b) of said Bill of Complaint, defendants deny each and every allegation thereof except as said allegations are herein specifically admitted or alleged.

(b) Defendants admit that on the 24th day of February, 1944, the Legislature of the State of Arizona adopted an act entitled, "An Act ratifying the Colorado River Compact; and declaring an emergency," Sess. L. Ariz., page 427.

(c) The interpretations, intent, meaning and effect of the said Colorado River Compact and the Statutory Compact set out in the First Affirmative Defense, and relied on by California, are based on the text of said documents, the legislative history thereof and the contemporaneous and administrative interpretations thereof. Such interpretations were in large part identical with the interpretations presented to this Court by Arizona in the case of *Arizona v. California*, 283 U. S. 423 (1931), and are the interpretations upon the basis of which Arizona rejected the Colorado River Compact and sought to have that Compact and the Boulder Canyon Project Act declared invalid and void. Such interpretations were well known to Arizona long prior to, and in, February of 1944. Any ratification of the Colorado River Compact by Arizona in 1944 necessarily constituted an acceptance of such interpretations.

(d) The Statutory Compact became operative solely by reason of Arizona's failure to approve and ratify the Seven-State Compact within the six months' period set out in Paragraph 1 of Section 4(a) of the Boulder Canyon Project Act. Arizona, in this action, seeks to establish alleged rights dependent upon that State's participation

as a party to the Colorado River Compact as a Seven-State Compact, and also seeks to establish alleged rights as a third party beneficiary of the said Statutory Compact. Arizona has not herein, or otherwise, offered to do equity and to waive any rights as such third party beneficiary, or by such waiver, or otherwise, to place California in the same position in its relation to Arizona as that which California would have occupied with respect to contractual or other rights to the use of waters of the Colorado River System, had the Legislature of the State of Arizona approved and ratified the proposed Colorado River Compact as a Seven-State Compact prior to June 25, 1929. Arizona cannot, as of February 24, 1944, and thereafter, be permitted to assert, to her advantage, and to California's detriment, rights allegedly derived from, and dependent upon, both the Colorado River Compact and the Statutory Compact.

(e) Defendants admit that on the 24th day of February, 1944, the Legislature of the State of Arizona adopted an act entitled "An Act ratifying the contract between the United States and the State of Arizona for storage and delivery of water from Lake Mead, and declaring an emergency," Sess. L. Ariz. 1944, page 419, and allege that said statute contained the following provisions, among others:

> Article 7 "(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boul-

der Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies."

"Article 10. Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act: (2) what part if any, of the water used or contracted for by any of them falls within Article III(a) of the Colorado River Compact: (3) what part, if any, is within Article III(b) thereof: (4) what part, if any, is excess or surplus waters unapportioned by said Compact: and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system: provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III(a) of the Colorado River Compact between the Upper Basin and the Lower Basin."

"Article 18. Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act, such definitions shall apply in construing this contract."

60.

Answering Paragraph XIV of said Complaint, deny, except as herein expressly admitted or alleged, all the allegations of said Paragraph XIV. Allege that by contract made March 30, 1942, the United States agreed to deliver to Nevada from storage in Lake Mead "so much water

as may be necessary to supply the State a total quantity not to exceed One Hundred Thousand (100,000) acre feet each calendar year" and that Nevada agreed to pay charges therefor. Allege that by contract made January 3, 1944, the United States and Nevada agreed to amend said contract of March 30, 1942, to provide that:

> "Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water, including all other waters diverted for use within the State of Nevada from the Colorado River System, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year * * *."

Allege that Nevada has contended that it has not by any official or binding act limited its claims of right to use of waters of the Colorado River System to said quantity of 300,000 acre-feet per annum or any other specific quantity, and allege that legislation is now pending in the Congress to authorize construction of projects in Nevada requiring the aggregate annual beneficial consumptive use of quantities of water in excess of said amount.

61.

Answering Paragraph XV of said Complaint, deny, except as herein expressly admitted or alleged, all the allegations of said Paragraph XV. Admit that portions of New Mexico and Utah are located within the Lower Basin of the Colorado River System, as defined by Article

III(g) of the Colorado River Compact. Admit that in Article 7(g) of its alleged contract with the United States of February 9, 1944, "Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such compact, and nothing contained in this contract shall prejudice such rights." Allege that such "equitable shares" have not been defined nor determined. Defendants have no knowledge, information or belief upon the subject sufficient to enable them to answer and, placing their denial upon that ground, deny that Arizona expects to negotiate with New Mexico and Utah, or New Mexico or Utah, a compact, or compacts, which will define the respective rights, or any rights, of those States, or either of them, to participate as Lower Basin States, or otherwise, in the use of Colorado River water, or Colorado River System water, apportioned now or hereafter to the Lower Basin. Allege that neither New Mexico nor Utah has, by any official or binding act indicated that it intends to, or will, negotiate any compact with Arizona in the premises. Allege that New Mexico and Utah contend that they have not, by any official or binding act, limited their respective claims to the use of waters of the Colorado River System available for use in the Lower Basin. Allege that there are present or potential controversies between Arizona on the one hand and New Mexico and Utah on the other, as to whether any portions (and if so, what portions), of the present or future rights of use of New Mexico and Utah relate to the waters, the right of use of which is apportioned to the Lower Basin by Article III(a) of the Compact, or relate to the waters of which the Lower Basin is entitled to increase its use under Article III(b)

of the Compact, or relate to some other category of waters.

62.

Answering Paragraph XVI of said Complaint, deny all the allegations of said paragraph except as hereinafter expressly admitted or alleged. Allege that the treaty between the United States and the United Mexican States, signed February 3, 1944, and proclaimed effective as of November 8, 1945 (Treaty Series 994), allotted to Mexico a guaranteed annual quantity of 1,500,000 acre-feet of water, from any and all sources, and any other quantities arriving at the Mexican points of diversion. Said Treaty also provides that in any year in which there exists a surplus of waters of the Colorado River System in excess of the amount necessary to supply users in the United States and the guaranteed quantity of Mexico, the United States will deliver additional waters of the Colorado River System to provide a total quantity not to exceed 1,700,000 acre-feet a year. Allege that said guaranteed quantity of 1,500,000 acre-feet may be reduced in the event of extraordinary drought or serious accident to the irrigation system in the United States, in the same proportion as consumptive uses in the United States are reduced. Allege that the terms "any and all sources" as so used in said treaty means the entire Colorado River System as defined in Article II of the Colorado River Compact, including the Gila River and its tributaries. Allege that by the terms of Article III(c) of the Compact any right of Mexico to the use of any waters of the Colorado River System

> "shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if

such surplus shall prove insufficient for this purpose then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and wherever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d)."

63.

Answering Paragraphs XVII(a) and XVII(b) of said Complaint, deny, except as herein expressly admitted or alleged, all of the allegations of said paragraphs. Allege that there is available to Arizona, Nevada, Utah and New Mexico in the aggregate the beneficial consumptive use of 3,100,000 acre-feet per annum of the waters of the Colorado River System, including the Gila River and its tributaries, apportioned by Article III(a) of the Colorado River Compact, plus one-half of the excess or surplus waters unapportioned by Article III(a) of the Compact, including in such excess or surplus waters unapportioned by Article III(a) of said Compact the increase of use permitted to the Lower Basin by Article III(b) of the Compact, said aggregate being subject to an undetermined deduction on account of reservoir and other losses, and such deductions as may be required in consequence of the Mexican Water Treaty. Allege that the share thereof to which Arizona may be entitled, and to which each of the other said States may be entitled, of the uses to which the four said States are entitled in the aggregate, has not been determined in any manner. Admit that Arizona is not presently beneficially consumptively using 3,800,000 acre-feet of water per annum. Allege that there have been or are now being constructed in Arizona projects which when fully operating, will require the beneficial con-

sumptive use (diversions less returns to the river) of waters of the Colorado River System in the approximate amount of 3,200,000 acre-feet per annum, of which not less than 2,000,000 acre-feet per annum is so used from the waters of the Gila River and its tributaries, and of which the remainder will be so used by the Yuma Project, Parker Valley Indian lands, lands in Mohave Valley, and by the Gila Project and other projects from the main stream of the Colorado River and by other projects from the waters of the Little Colorado River and other tributaries. The aforesaid quantities are exclusive of the quantities proposed by Arizona to be used from the main stream of the Colorado River upon the Central Arizona Project.

64.

Answering Paragraph XVIII of said Complaint, allege that defendants have not sufficient information or belief to enable them to answer the last sentence of said Paragraph XVIII, and, placing their denial on that ground, deny the allegation that there is no controversy which relates to the use of waters of the Colorado River System by Indians or Indian tribes which involves the complainant. Allege that under Article 7(a), 7(b), 7(d), 7(j) and 7(l) of the alleged contract between the United States and Arizona of February 9, 1944, all beneficial consumptive uses in Arizona of Colorado River System water, whether by Indians or others, are chargeable to Arizona.

65.

Answering Paragraph XIX of the Complaint, deny, except as herein expressly admitted or alleged, all of the allegations of said paragraph. Admit that Arizona is, in a large part, an arid state, and that irrigation is essential

to its successful agriculture, that water is needed for domestic, municipal and industrial purposes and that precipitation is insufficient to satisfy the need for water unless conserved and stored; and allege that the same facts are true of the Lower Basin generally and of the areas served by the defendants in particular. Admit that there are in Arizona in excess of 725,000 acres of land presently irrigated by the use of surface and underground water. Admit that Arizona has no substantial source of water except the Colorado River System and certain large underground water basins which in part feed, or are fed by, waters of the Colorado River System. Allege that the beneficial consumptive use of such water, to the extent that it is derived from the waters of the Colorado River System, is chargeable to Arizona. Allege that, since 1944, Arizona has permitted and encouraged the expansion of the irrigated area in that State by several hundred thousand acres through the leasing and sale of state-owned land and otherwise, in knowledge of the inadequacy of the surface and underground water supply to support such irrigation on a sustained basis, and has not enacted suitable or any effective legislation for the control of the overdraft and depletion of the underground water supply, or to protect the underground water supply of existing projects from drainage by new projects. If, as alleged in the Bill of Complaint, the underground supply in Arizona is grievously depleted, that situation is due to the failure of Arizona to regulate the reckless and speculative expansion of acreage, waste of water and overdraft of ground water basins in that area; and not to any act of the defendants. Allege that the water supply presently available to the Central Arizona area is ample to sustain a population and industrial production more

than twice as large as now exists, and that the reduction, if any, in value of agricultural production which may result from inability to import water from the main stream Colorado River to that area will be minor in extent and will have no appreciable effect on the economy of the State. Allege that the Secretary of the Interior in his reports, referred to in the Bill of Complaint, on the Central Arizona Project, has stated that in terms of gross crop value the average annual loss in Central Arizona without the Project would be only $5,300,000, which is approximately 1% of the construction cost allocated to irrigation.

66.

(a) Answering Paragraph XX of said Complaint, deny, except as herein expressly admitted or alleged, all the allegations of said Paragraph XX. Admit that at the request of Arizona the United States Bureau of Reclamation has investigated a project to bring water to Central Arizona from the main stream of the Colorado River. Admit that such project is known as the Central Arizona Project, and allege that it includes many features other than those required to bring water from the main stream of the Colorado River to Central Arizona. Deny that plans for such project are substantially as set out in House Document 136, 81st Congress, and allege that physical and engineering features, financial plans and cost of the project have been materially altered from time to time since the preparation of said report. Admit that during the 79th and succeeding Congresses Arizona has endeavored to obtain Congressional authorization for the construction of one or another kind of Central Arizona Project by the Bureau of Reclamation. Admit and allege that defendants have vigorously resisted such legislation

upon the grounds hereinafter stated. Admit that bills to authorize one or another kind of Central Arizona Project were passed by the United States Senate in the 81st and 82nd Congresses but failed of passage in the House of Representatives. Admit that on April 18, 1951, the House of Representatives Committee on Interior and Insular Affairs adopted a resolution that consideration of the bills relating to the Central Arizona Project

> "be postponed until such time as use of the water in the lower Colorado River Basin is either adjudicated or binding or mutual agreement as to the use of the water is reached by the States of the lower Colorado River Basin."

Allege that on October 10, 1951, the same committee adopted a resolution

> "To defer action on S.75 (a bill to authorize construction of the Central Arizona Project) until February 1, 1952, or some time thereafter, to give the proponents an opportunity to have decided the justiciable issue before the Courts, or draft new legislation that will create a justiciable issue without authorizing a project of undetermined feasibility."

(b) Allege that such Congressional action has been due, among other things, to the following facts:

(1) Arizona has not shown that there is any water of the Colorado River System lawfully available for permanent beneficial consumptive use in Arizona in addition to the quantities of such water now used by, or committed to the use of, projects now constructed or under construction in Arizona.

(2) Such waters as were available for use in Arizona have been rendered unavailable for use by the proposed

Central Arizona Project by acts of the State of Arizona and in consequence of causes beyond the control of California and these defendants, and specifically because:

(i) In 1948, Arizona, with knowledge of the present controversy over the waters of the Colorado River System, elected to dedicate the beneficial consumptive use of 600,000 acre-feet of water per annum to the development of raw desert land on the Gila Project on the main stream of the Colorado River, and has done so, in preference to preserving the right to such waters for the Central Arizona Project.

(ii) Until the eve of this action, Arizona had made no appropriations under her own laws for the Central Arizona Project, and had permitted other projects in that State to acquire priorities superior to the priorities of that project.

(3) The Central Arizona Project, as shown by the official reports thereon by the Department of the Interior, is infeasible and uneconomic in the following, among other respects:

(i) The Project described in said H. Doc. 136, 81st Congress would lift irrigation water more than 985 feet and transport it more than 325 miles to grow grains, cotton, alfalfa and other field crops. Essentially, the plan proposed is to deprive the Salt River Project of approximately one-half of the supply which said project normally receives from the reservoirs it has constructed on the Salt River, transport to the Gila Valley the waters so taken from the Salt River Project, and replace such waters with waters from the main stream of the Colorado River, plus some waters for other areas. In the course of this substitution only about one-half of the water diverted

from the main stream would be delivered to the land, the remainder disappearing in transit.

(ii) The capital cost of the Project is not less than $800,000,000, and said official reports of the Department of the Interior concede that no part of this sum could or would be repaid by the irrigation water users.

(iii) The Central Arizona Project would require a capital investment of approximately $2,000 per acre to irrigate lands which would have an average value of $300 per acre when given a full supply of water.

(iv) The Project's annual irrigation operating costs alone would exceed the entire payment capacity of the irrigators, making it necessary to sustain the irrigation features by means of subsidies equal to the entire capital cost thereof, plus all of the interest on the capital costs, plus part of the costs of operation and maintenance thereof. The maximum portion of the construction cost which the latest of said reports claims that the irrigators can repay, in any circumstances, above the cost of operation maintenance and replacement, is less than ten cents per acre per year.

(v) Bridge Canyon Dam, as proposed by this Project, would have a reservoir capacity so small that it would be filled with silt in less than thirty years, unless an additional and much larger reservoir were built upstream at an estimated cost of not less than $350,000,000. No provision is made in the Central Arizona Project for the construction or payment of the cost of said upstream reservoir, and such cost is in addition to the cost of $800,000,000 heretofore alleged.

(vi) Bridge Canyon Dam would neither conserve nor make available any water for the Central Arizona Pro-

ject, but is arbitrarily included therein so that the power revenues therefrom, including therein the amounts collected from the power users as interest on the capital invested by the Federal Government, may be diverted from servicing the federal debt occasioned by construction of that dam, and used to subsidize the Project's irrigation aqueduct and distribution system.

(vii) The Project would consume one billion five hundred million kilowatt hours per annum—one-third of the power output of the proposed Bridge Canyon power plant —for uneconomic purposes.

(viii) All of the Project's gross revenues from all sources, including power, would be less than the simple interest on the total investment.

(ix) The burden upon the federal taxpayers occasioned by the necessity to pay the interest upon the increase in the national debt occasioned by the Project (for the payment of which the Project would supply no revenues), would, according to official reports to the Congress by the Secretary of the Interior supplementing H. Doc. 136, 81st Cong., referred to in the Bill of Complaint, exceed two billion dollars during the first seventy-five years alone, at the end of which time no part of the Project investment would have been repaid; and this burden would continue to increase indefinitely thereafter.

(c) Allege that the report of the Department of the Interior on the Central Arizona Project (H. Doc. 136, 81st Congress) was conditioned upon the enactment by Arizona of suitable legislation to control the expansion of new acreages and the overdraft on the underground water supply. No such legislation has been enacted, and the irrrigated acreage in Arizona has expanded more than

250,000 acres since the date of said report. Said expansion exceeds the area which the Bill of Complaint alleges in Paragraph XIX thereof will go out of cultivation if additional water is not supplied.

(d) Allege that the said report of the Department of the Interior was further conditioned upon the organization of a district or other entity embracing the service area of the proposed Project with powers of taxation, to contract with the United States for the repayment of the Government's investment allocated to irrigation. No such district has been organized.

(e) Allege that the Project violates the standards of feasibility established by the Congress, its authorization would require the reversal of the policies of nearly fifty years of federal legislation, and there is no assurance that necessary legislation to authorize said Project will ever be enacted.

(f) Allege that Arizona cannot, in equity, demand the curtailment or abandonment of projects now existing and operating in California in order to reserve water for an uneconomic and infeasible Central Arizona Project. The detriment to California and the United States thereby to be occasioned would far exceed the benefits claimed for the Central Arizona Project. No net benefit would result from the application of water to the Central Arizona Project at the sacrifice of projects already constructed in California.

67.

(a) Answering Paragraph XXI(a) of said Bill of Complaint, deny that Arizona is entitled to the amount of water of the Colorado River System claimed by her, and allege that she and the States of Nevada, Utah, and New

Mexico are entitled in the aggregate to not more than the quantities of said water as alleged in Paragraph 63 of this Traverse. Allege that defendants are without information or belief to enable them to answer the other allegations of said Paragraph XXI(a) of said Bill of Complaint, and placing their denial on that ground, deny all other allegations of said Paragraph XXI(a).

(b) Answering Paragraphs XXI(b) and (c) of said Bill of Complaint, allege that defendants are without information or belief sufficient to enable them to answer, and, placing their denial on that ground, deny all the allegations of said paragraphs.

(c) Answering Paragraph XXI(d) of said Bill of Complaint, deny that the claims of defendants to waters of the Colorado River System are improper or wrongful and allege that said claims of defendants are proper and valid as more particularly alleged in the Affirmative Defenses in this Answer. Allege that defendants are without information or belief to enable them to answer the other allegations of said Paragraph XXI(d), and, placing their denial on that ground, deny all other allegations of said Paragraph XXI(d).

(d) Answering Paragraphs XXI(e) and (f) of said Bill of Complaint, allege that defendants are without information or belief sufficient to enable them to answer, and, placing their denial on that ground, deny all the allegations of said paragraphs.

68.

Answering Paragraph XXII of the said Bill of Complaint, admit that controversies exist between the plaintiff and the defendants as to the interpretation, construction, and application of the Colorado River Compact, the Boul-

der Canyon Project Act and the California Limitation Act, but deny that the subject of such controversies is fully or accurately set out in the said Paragraph XXII and allege that there are additional subjects of controversy disclosed by Affirmative Defenses and denials contained in this Answer. Deny the accuracy or validity of the alleged solutions to the controversies suggested by Arizona in said Paragraph XXII, and deny that Arizona's position is sustained by this Court's decision in *Arizona v. California*, 292 U. S. 341, or in any other decision.

69.

Answering Paragraph XXIII of said Bill of Complaint, admit that there are claims asserted by the defendants in addition to the controversial subjects partially stated in Paragraph XXII of the Bill of Complaint, which adversely affect the alleged right of the State of Arizona to the beneficial consumptive use of 3,800,000 acre-feet of water from the Colorado River System, allege that such claims are stated in the Affirmative Defenses and denials contained in this Answer, and deny all other allegations of the said Paragraph XXIII.

70.

Answering Paragraph XXIV of said Complaint, deny all the allegations of said Paragraph XXIV except as expressly herein admitted or alleged. Admit and allege that under the authority of the Colorado River Compact, Boulder Canyon Project Act, California Limitation Act, Boulder Canyon Project Adjustment Act (54 Stat. 774) as amended, the Reclamation Law, the Mexican Water Treaty and other laws, Hoover, Davis, Parker, Headgate Rock, Palo Verde, Imperial and Laguna Dams have been constructed in the main stream of the Colorado River,

the Metropolitan (Colorado River) Aqueduct and All-American Canal have been constructed in California, and the Yuma Project in Arizona has been built and the Colorado River Indian Reservation irrigation project and Gila reclamation project in Arizona are under construction and are in partial operation. Allege that complainant and defendants have used and benefited from such facilities and that none of such facilities would have been constructed had it not been for one or more of said laws. Allege that Arizona and its water and power users are now estopped and forever precluded, as stated in the Second Affirmative Defense, from denying the validity and integrity of the Colorado River Compact, Boulder Canyon Project Act, California Limitation Act, and other laws in this paragraph mentioned, their effect as alleged in this Answer, and rights of defendants pursuant thereto. Admit and allege the validity and integrity of said laws in accordance with the true intent and meaning thereof at the time when they were respectively adopted or promulgated, as stated in the Affirmative Defenses of this Answer.

71.

Answering the allegations of Paragraph XXV of the said Bill of Complaint, deny all the allegations thereof.

72.

Answering Paragraph XXVI of said Complaint, deny, except as herein expressly admitted or alleged, all the allegations of said paragraph. Admit that facilities now constructed and in use to divert water from the Colorado River System for use in California, if said facilities were operated to their maximum capacity every day in the year, would have a capacity to take annual quantities exceeding 5,362,000 acre-feet of water, but allege that such capacities

are designed for peak deliveries to accommodate seasonal variations in demand for water, and except as such capacities provide a maximum rate of diversion, they are not directly related to actual beneficial consumptive use of water in the State of California, and that the designed capacity of said works, taking such factors into account, is based on the beneficial consumptive use of approximately 5,362,000 acre-feet per annum. Admit and allege that during the years 1946 to 1952, inclusive, defendants, through the use of such facilities, diverted water from the Colorado River System in the following quantities:

DIVERSIONS.

1946—3,381,000 acre-feet
1947—3,392,000 acre-feet
1948—3,714,000 acre-feet
1949—3,944,000 acre-feet
1950—4,312,000 acre-feet
1951—4,540,000 acre-feet
1952—4,588,000 acre-feet

Allege that each of the above stated quantities is materially greater than the beneficial consumptive uses of such water in California, in that they represent diversions without regard to returns to the river. Admit and allege that defendants and each of them have intended for many years, and do now intend, to make beneficial consumptive use (diversions less returns to the river) in California of quantities of Colorado River System water in excess of an aggregate annual consumptive use of 4,400,000 acre-feet, to-wit, 4,400,000 acre-feet per annum plus one-half of the excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact (including in such excess or surplus the waters referred to in Article III(b) of said Compact), plus any additional quantities which may from

time to time be available for use in California under said Compact, the Boulder Canyon Project Act, California Limitation Act, Mexican Water Treaty and other laws above mentioned, by reason of non-use by others; and allege that defendants have the right to make use of such water. Admit that defendants will in the future continue to increase their diversions and beneficial consumptive use of Colorado River System water, within the limits above stated.

73.

Answering Paragraph XXVII of the said Bill of Complaint, admit that the controversy between the parties hereto is a controversy of serious magnitude, but deny each and every other allegation of the said paragraph.

74.

Answering Paragraph XXVIII of said Bill of Complaint, admit the allegations of said paragraph, and allege that the States of California and Nevada through their Senators and Representatives, in the 79th, 80th, 81st and 82nd Congresses, have presented and urged the adoption by said Congresses of resolutions consenting that the United States be made a party to an action or actions in this Court for determination of the controversies existing among the Lower Basin States as to their respective rights to the use of Colorado River System water. Allege further that Arizona has opposed the adoption of any and all such resolutions.

75.

Answering Paragraph XXIX of said Bill of Complaint, admit the allegations of said paragraph and allege that Arizona is not entitled to any remedy against these defendants.

PRAYER.

WHEREFORE, defendants pray

1. That complainant be ordered by the Court to reply to the affirmative matter stated in this Answer.

2. That the Court decree that complainant take nothing by its Complaint, and that defendants recover their costs and disbursements herein expended.

3. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

Respectfully submitted,

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EXHIBIT "A."

Facts Relative to the Colorado River Aqueduct.

The Colorado River Aqueduct, financed and constructed by defendant The Metropolitan Water District of Southern California, diverts from the main stream of the Colorado River above Parker Dam, 155 miles below Hooyer Dam and 170 miles above the Mexican border. The aqueduct transports water 242 miles westward and there connects with a system of 215 miles of distribution aqueducts which serves the cities and other public bodies which are members of the District. These now number 48, including defendants City of Los Angeles and City of San Diego, extending 150 miles along the coastal plain of Southern California and encompassing a service area of over 1,570 square miles.

In 1923 the City of Los Angeles surveyed routes and began the design for such an aqueduct, and in 1924 appropriated water therefor under the laws of California. In 1926 the City of San Diego made appropriations for the same purpose and commenced the design of works.

The District was organized in 1928, under the authority of the Metropolitan Water District Act (Chap. 429 Cal. Stat. 1927, p. 694). It now has a population of over four million people and an assessed valuation exceeding five billion dollars.

As of June 25, 1929 (the effective date of the Colorado River Compact and the Boulder Canyon Project Act), the City of Los Angeles had expended about $3,000,000 in the design and preliminary construction expense of the Colorado River Aqueduct. Such preliminary work was later taken over and paid for by the defendant District.

The major works of the aqueduct, large-scale construction of which began in 1932 and was completed in 1941, have a capacity of 1,800 cubic feet per second for a diversion of 1,212,000 acre-feet per year. Water is lifted by five pumping plants 1,617 feet net.

In 1931 the District joined with the other defendant agencies in an agreement establishing their respective priorities in the use of Colorado River water available to California, thereby accepting a low priority which it would not have accepted under the construction of the Colorado River Compact and the California Limitation Act now urged by Arizona. On September 28, 1931, the District entered into a contract (amending an earlier contract of April 24, 1930) with the United States (Appendix 21), providing for delivery, from storage at Hoover Dam, of water with the priority and in the quantity set out in that Priority Agreement. As a part of the same transaction, and for the purpose of pumping water into and in its aqueduct, as well as assuring to the United States revenues to repay the cost of the Hoover Dam and Power Plant, the District also entered into a fifty-year contract to take (and to pay for whether taken or not) about one-third of the firm electrical energy output of the project. (Appendix 20.) This obligation amounts to about $75,000,000.

Parker Dam was built at the expense of this District by the United States under a contract dated February 10, 1933, ratified by the Act of August 30, 1935, 49 Stat. 1039. (Appendices 5, 22.) This dam provides a point of diversion for the quantity of water agreed by the United States to be delivered to the District from storage at Hoover Dam, under the Water Delivery Contract referred to above.

The water delivery contract, electrical energy contract, and contract for the construction of Parker Dam, all were parts of an integrated plan for the delivery, diversion and pumping of water of the Colorado River for consumptive use on the coastal plain of Southern California, with the priority, and in the quantity, set out in the Priority Agreement.

A qualified fee in the public lands traversed by the aqueduct was granted to the District by the Act of June 18, 1932, 40 Stat. 324.

The District has sold interest-bearing bonds and expended in excess of $200,000,000 in the construction of the Colorado River Aqueduct, the distribution system and Parker Dam, and is now expending $60,000,000 more for the construction of additional works.

Service of water through the Colorado River Aqueduct commenced in June, 1941, and has continued since that date.

The aqueduct system is designed to meet the needs of the expanding population and industry of the coastal plain of Southern California for the foreseeable future. Prudent practice in the planning and construction of large municipal water supply systems in areas with a history of rapid growth of population and industry requires that the capacity of such works, and the firm water supply, be sufficient to care for the needs of the population projected so as to avoid disastrous water shortages.

The San Diego branch of the Colorado River Aqueduct, extending from a point on the main aqueduct for a distance of approximately 71 miles to the south, was constructed by the Bureau of Reclamation for the Navy Department under an executive order, ratified by the Act

of April 15, 1948, 62 Stat. 171, to meet a shortage of water in a critical defense area. The San Diego County Water Authority, of which the City of San Diego is a part, is obligated by contract to repay to the United States the cost of this branch aqueduct, $15,000,000.

A second "barrel" to the San Diego Aqueduct was authorized by the Act of October 11, 1951, 65 Stat. 404, and is now under construction. The San Diego County Water Authority also is obligated to repay to the United States the true cost of this second barrel, an additional $18,000,000 with interest. The aggregate capacity of the two San Diego barrels is approximately 200 cubic feet per second.

The total investment in the Colorado River Aqueduct System, its San Diego extension, and distribution works to date, is over $244,000,000; and when works now under construction are completed, this investment will be in excess of $300,000,000. The ultimate investment, to which the community is committed, will be considerably greater.

The area served by the Colorado River Aqueduct is notably rich in agriculture and petroleum products and has sustained a phenomenal industrial growth. Many important military installations and defense industries are located within said service area.

The climate of Southern California is extremely arid. Local water supply is limited and variable and the area is dependent upon a supplemental supply from the Colorado River Aqueduct.

Maps showing the boundaries of the District are included in the Appendix hereto as Plates 6A and 6B

EXHIBIT "B."

Facts Relating to Palo Verde Irrigation District.

The defendant Palo Verde Irrigation District contains within its boundaries approximately 120,500 acres, including 16,000 acres of the irrigable lands on the Lower Palo Verde Mesa. The Palo Verde Valley proper is located on the west bank of the Colorado River, about 35 miles along the river and about 6 miles wide. The "Lower Mesa," containing approximately 34,000 acres, adjoins the Valley on the west.

In point of settlement Palo Verde Valley is one of the oldest irrigated areas in the Colorado River Basin. About 1856, Thomas H. Blythe located in the Valley on lands riparian to the Colorado River. These lands, later known as the "Blythe Rancho," were not acquired by Blythe, however, until the middle 70's when 36,000 acres were deeded to him by the State of California as swamp and overflow land. The westerly portion of the Valley and the Mesa area were then government land.

While diversions for irrigation were made by Blythe, appropriations under the laws of the State of California were not made until July 17, 1877, when two filings were posted and recorded by Thomas H. Blythe for 190,000 miner's inches or 3800 cubic feet per second of the waters of the Colorado River for "agricultural, mining, manufacturing, domestic and commercial purposes" to supply water to the entire Palo Verde Valley area and the Palo Verde Lower Mesa. In 1877 Blythe constructed diversion works (an intake structure of 800 cubic feet per second capacity) for the irrigation of the Valley. This was an open gravity-fed canal, protected by a natural rock point which projected into the river in the northeasterly portion

of the Valley. The natural slope of the terrain through the Valley being from the north to the south and westerly from the river, the water thus diverted flowed by gravity to any portion of the Valley area to be irrigated.

Additional notices of appropriation were posted and recorded by Blythe and his associates as follows:

December 15, 1878, O. P. Calloway and T. H. Blythe for 95,000 miner's inches, and for the overflow waters of Olive Slough;

February 15, 1883, Thomas H. Blythe, 100,000 miner's inches;

April 2, 1904, A. A. Moore, Jr., and Mrs. Florence Blythe Moore, 300,000 miner's inches.

All of these appropriations were supplemental to and not in conflict with the prior notices of appropriation of 1877.

On November 15, 1905, the Blythe Estate sold and transferred title to the Blythe Rancho and its water rights and system to A. L. Hobson, W. A. Hobson and Frank Murphy. Immediately thereafter, the Hobsons and Murphy organized the Palo Verde Land and Water Company, a California corporation, for the purpose of acquiring the property and water rights of the Blythe Rancho. The Palo Verde Land and Water Company proceeded to initiate an over-all irrigation plan and design. This consisted of an arterial canal system leading from the Blythe intake, hereinabove described, and extending by main canal southwesterly and southerly through the Valley area. The main canals were so designed that the entire Valley area could be irrigated by the construction of laterals. Under this over-all plan, the intake structure was enlarged to a capacity in excess of 1500 cubic feet per second. This

was a reinforced concrete intake structure. The canal system then in existence was enlarged and extended. The intake and upper portion of the main canal was designed and constructed of sufficient size and capacity to divert water to a point where it could be and would be, under said over-all plan, transported to the Lower Mesa area by the construction of a pumping plant and additional main canals in that area.

In the year 1908, the Land and Water Company caused to be organized the Palo Verde Mutual Water Company and by deed dated July 28, 1908, conveyed to the Mutual Water Company the irrigation system, water rights, rights-of-way, and all other lands and properties owned by said Land and Water Company. The Mutual Water Company immediately took over the irrigation system and rebuilt the intake structure and enlarged the entire canal system. All of this construction work was undertaken pursuant to the over-all plan and design theretofore adopted. Although the Mutual Water Company had acquired all of the water rights under the prior notices of water appropriations posted and recorded by Blythe and associates, as hereinabove described, the Company on September 14, 1908, through C. W. Petit, caused to be posted and recorded a notice of appropriation for the Mutual Water Company claiming 200,000 miner's inches of water of the Colorado River "for the purposes of irrigating Ranch lands, for domestic and stock uses, and for power for operating machinery and for generating electric energy and for other useful and beneficial purposes." The area claimed in the appropriation is the same as that set forth under the Blythe filings. Again on August 5, 1911 an additional notice of appropriation was posted and recorded by C. J. Berg for the Mutual Water Company of

a claim for 200,000 miner's inches of water of the Colorado River "for the purpose of irrigating ranch lands, for domestic and stock uses, and for other useful and beneficial purposes." These appropriations made on behalf of the Mutual Water Company were thereafter assigned to the company and are supplemental to and not in conflict with the prior appropriations which had been transferred to the Mutual Water Company by its predecessors in interest.

During 1910, after the construction by the federal government of Laguna Dam for the Yuma Project in Arizona, it was discovered that the bed of the river had been raised and that levees would have to be constructed, heightened and strengthened to protect the irrigated area from flood waters. In 1914, the Palo Verde Joint Levee District was formed for the purpose of protecting the Valley area from flood waters and to control the river. More than 35 miles of levee works were constructed by this District during its existence and until its functions were transferred to defendant Palo Verde Irrigation District, as hereinafter set forth.

The said rising bed of the river subsequent to 1910, in addition to necessitating the levee work, also caused a corresponding rise in the water table of the Valley area and a serious drainage problem had developed. To meet this situation, the Palo Verde Drainage District was formed in 1922, and during the time of its existence and until its functions were transferred to Palo Verde Irrigation District, the said Drainage District had constructed approximately 72 miles of drains and spillways to expedite the return flow of the water to the river and to lower the underground water table.

In 1917 the 1908 intake structure was widened to a capacity in excess of 2100 cubic feet per second. This

intake structure was thereafter known as the "Blythe Intake."

About the year 1921 the management of the Levee District and the Drainage District was practically identical. In order to consolidate the functions of the Mutual Water Company, the Levee District and the Drainage District under one management and to continue the development of one comprehensive plan for the entire Palo Verde Valley and Mesa areas, the Palo Verde Irrigation District, defendant herein, was organized under a special act of the California Legislature (Chap. 452, Calif. Stats. 1923). The District thereafter succeeded to all of the properties and water rights of its said predecessors in interest.

As of June 25, 1929, the defendant Palo Verde Irrigation District, its predecessors in interest, and property owners within its boundaries had constructed the above described Blythe Intake, 440 miles of main canals and laterals, more than 72 miles of drains and spillways, and more than 35 miles of protective levee works. The diversion and irrigation works have at all times been in continuous operation.

As hereinabove set forth in the First Affirmative Defense of this Answer, Palo Verde Irrigation District entered into a contract with the Secretary of the Interior on February 7, 1933, for the delivery of water to the District under the aforesaid appropriation in a total quantity in accordance with the amounts and priorities set forth in the Seven-Party Priority Agreement hereinabove described in said First Affirmative Defense, said water to be delivered to the District and measured at the point of diversion known as the "Blythe Intake."

On April 21, 1938, defendant District filed Application No. 9280 with the State of California, Department of Public Works, Division of Water Resources, to appropriate waters of the Colorado River at the point of diversion said Blythe Intake, for use on the lands in the District and between the District and the Colorado River, a gross area of 104,500 acres and 16,000 acres in the Lower Palo Verde Mesa. Said application provided that it was filed to supplement the existing rights and without waiving any of the existing rights or claims to such rights under the appropriations filed from July 17, 1877 to August 5, 1911. Pursuant to said application, Permit No. 7652 was issued by the State of California for a maximum rate of diversion not exceeding 2100 cubic feet per second; and an average rate of diversion not exceeding 1500 cubic feet per second.

In 1944 and 1945, in consequence of the retrogression or scouring of the river bed following the construction of Hoover Dam, a rock-filled diversion weir was constructed at the expense of the United States. Since this weir was located upstream from the former Blythe Intake, the District was compelled to construct a new reinforced concrete intake structure, which is of a capacity in excess of 2100 cubic feet per second. This intake structure is the one now in use by this District.

At the present time the Palo Verde Valley proper has a population of approximately 11,000 people. The 1952 farm income from field crops, truck crops and livestock was in excess of $20,500,000. The Palo Verde Irrigation District has no other source of water supply except from said Colorado River through said intake, canals and works hereinabove described. The diversion works and distribution system and protective works of the District at the

present time consist of the intake structure hereinabove described, more than 450 miles of main and lateral canals extending throughout the entire Valley area, and more than 106 miles of drains and spillways. There are presently more than 85,000 acres, gross, of land in cultivation in the Valley proper and approximately 2000 acres on the "Lower Mesa."

During the time that the foregoing diversion and distribution system had been constructed, the property owners within the District have expended considerable sums in the clearing and leveling of lands in order to put the aforesaid appropriative waters to beneficial use. From 1877 to date, the defendant Palo Verde Irrigation District, its predecessors in interest and property owners, have expended in said construction of said intake, canals, laterals, drains, spillways, levees and land leveling, in excess of $20,000,000.

During all of said time from 1877 to date, said defendant Palo Verde Irrigation District and its predecessors in interest have had a definite plan and project for the utilization of the full amount of said appropriated water and have at all times exercised the utmost of due diligence in the construction of said works and the improvement of said lands. Said plan for the project is now substantially completed. The full quantity of water under the appropriations made by its predecessors in interest was and is necessary and essential for beneficial consumptive use within said District, and said use is within the said appropriations, all of which appropriative and other rights and properties of its predecessors, as hereinabove set forth, are now owned by Palo Verde Irrigation District, and said rights relate back to 1877.

EXHIBIT "C."

Facts Relative to the All-American Canal Project.

The All-American Canal diverts at Imperial Diversion Dam, 303 miles below Hoover Dam and 22 miles above the Mexican border. It transports water into the Imperial Valley for the Imperial Irrigation District and into Coachella Valley for the Coachella Valley County Water District, delivering water enroute to the Yuma Reclamation Project, of which 25,000 acres are in California and 50,000 acres are in Arizona.

An area of about 1,550,000 acres in the Imperial Valley and its northwestern extension, Coachella Valley, lies below the elevation of the Colorado River at the International boundary line. Over 1,000,000 acres of this area lie below sea level. The bringing of water from the Colorado River to irrigate these lands was first proposed in the 1850's, and the approval of such a project was given by an act passed by the California Legislature in 1859. The area is climatically of high temperatures and is one of the most arid in the United States, with practically no rainfall. These conditions, combined with a fertile soil and a year-round growing season, result in a high per-acre requirement for water.

Development of Imperial Valley commenced with surveys and plans made in 1893 to divert water from the Colorado River at a point which was later the site of Laguna Dam. It followed in general the present route of the All-American Canal.

A less expensive route was used in 1901 for the construction of a canal (Alamo Canal) which diverted in California a short distance above the Mexican boundary, traversed Mexican territory for some 60 miles and then

re-entered the United States, utilizing for much of the distance an old overflow channel of the Colorado River. This canal and its extensions totaling 130 miles continued in service until 1942. Although the route was thus changed from that originally surveyed, the area to be developed remained the same, viz., the area in Imperial Valley to be ultimately served by Imperial Irrigation District through the All-American Canal.

Formal appropriations of water under the laws of California for irrigation and power development, each of which was in the amount of 10,000 cubic feet per second of the flow of the Colorado River, were made by the predecessors of Imperial Irrigation District in the period 1893-1899 and succeeding years. The area described in these appropriations is that now to be served by means of the All-American Canal.

Irrigation commenced in Imperial Valley in June, 1901, and has been maintained continuously since that date. The original wooden headgate was replaced in 1906 by a permanent headgate, Hanlon Heading, with a capacity of 10,000 cubic feet per second.

In 1905, river floods broke into the Alamo Canal in Mexico and the entire flow of the Colorado River for a period of approximately two years ran from Lower California into Imperial Valley, threatening the whole valley with destruction, inundating a substantial part of the reclaimed lands, filling the lowest portion of Salton Sink and creating what is now known as the Salton Sea. The break was not successfully repaired until 1907.

The defendant Imperial Irrigation District, organized in 1911, succeeded in 1916 to all of the water rights and other property above mentioned. By 1922 approximately

540,000 acres of the land now within this District had received water service from the Colorado River.

Interference by junior divertors in the Upper Basin with senior appropriators in California, the need for storage and flood control, the desirability of removing the District's water supply from the jurisdiction of Mexico, the necessity of eliminating existing diversion difficulties, and the insistence by the United States on a diversion works at or near Laguna Dam, all manifested the need for an All-American Canal.

Accordingly, in 1918 this District entered into a contract with the Secretary of the Interior providing for surveys and plans for an All-American Canal to Imperial Valley, to divert at the then completed Laguna Dam, as proposed by the 1893 plans and surveys. The Secretary appointed a Board of Engineers which made a favorable report July 22, 1919. The plans and route proposed were substantially the same as those of the present All-American Canal to Imperial Valley.

On October 23, 1918, the District acquired by contract with the United States the right to utilize Laguna Dam as a diversion dam, and agreed to construct an All-American Canal from that point into Imperial Valley. For the right to use the Laguna Dam, this District agreed to pay, and has paid the United States—including a small proportion later paid by Coachella Valley County Water District and San Diego—the sum of $1,600,000.

In 1919 and 1920 the Congress held hearings on legislation authorizing the construction of the All-American Canal. At these hearings interests in other states, with water rights junior to those of Imperial Irrigation District, protested the construction of the canal, which would

expedite development of Imperial Valley, unless storage on the Colorado River was provided to protect the junior appropriators, since the normal flow of the river had already been appropriated and in some years fully utilized. Storage was also urgently needed for flood control to relieve the increasing cost of protecting the whole lower river area by levees in Arizona, California and Mexico. As a result, the Congress enacted the "Kincaid Act" (Act of May 18, 1920, 41 Stat. 600), providing for an investigation by the Secretary of the Interior, and the Secretary transmitted a report, "Problems of Imperial Valley and Vicinity," to the Congress in February, 1922 (Sen. Doc. 142, 67th Cong., 2d Sess.). This report recommended that the United States construct a high storage dam, at or near Boulder Canyon on the lower Colorado River, and an All-American Canal from Laguna Dam to the Imperial Valley.

This report was the genesis of the Boulder Canyon Project and was utilized in the negotiation of the Colorado River Compact.

In 1922 Congress began consideration of the first of the Swing-Johnson bills to carry out the recommendations of that report. Similar bills were considered by Congress in succeeding years, culminating in the Boulder Canyon Project Act of 1928.

The Upper States of the Colorado River Basin, Colorado, New Mexico, Utah and Wyoming, had objected that if such storage works were built, the additional rights which would be acquired through priority of appropriation by water users in the lower States would preclude the future expansion of uses by projects in the Upper Basin. The Upper States insisted that the rights for such future

development be protected before the project was authorized; and out of this demand came the Colorado River Compact.

As of June 25, 1929, the effective date of the Compact and Act, diversion works and a main canal had been constructed with a capacity adequate for the irrigation of 1,000,000 acres of lands in Imperial Valley, and over 600,000 acres were receiving water service from the Colorado River System.

On December 1, 1932, Imperial Irrigation District and the United States entered into a contract, under provisions of the Boulder Canyon Project Act, for the construction by the Bureau of Reclamation of the All-American Canal, including a new diversion dam, Imperial Dam, located a few miles upstream from Laguna Dam, and repayment of the cost thereof to the United States; and for delivery of water to the District at Imperial Dam in accordance with its appropriative rights.

As provided in the Boulder Canyon Project Act, the All-American Canal contract between Imperial Irrigation District and the United States granted to Imperial Irrigation District the right to utilize the power possibilities upon that canal, including power possibilities at Pilot Knob. This contract requires the net proceeds from power development to be paid by Imperial Irrigation District to the United States to be applied upon the cost of the All-American Canal Project. The contract also provides that Imperial Irrigation District include within its boundaries certain designated lands on the Mesa areas of Imperial Valley so that Government and private lands there located would be served by the canal as contemplated by the District's appropriative rights. The inclusion of

said land is also intended to give Imperial Irrigation District an increased acreage base to bear the cost of said All-American Canal Project and other obligations in connection with the general reclamation of these areas. Imperial Irrigation District has developed the power possibilities on the All-American Canal Project. This District is the sole supplier of electrical energy throughout the Imperial Irrigation District and Coachella Valley County Water District and additional areas in Imperial and Riverside Counties, California.

Defendants City of San Diego and Coachella Valley County Water District (organized in 1918) entered into contracts in 1933 and 1934, respectively, with the United States for capacity in, and repayment based on capacities, of a proportionate part of the cost of the canal and dam.

Construction of the All-American Canal commenced August 8, 1934, and water was first delivered therefrom to defendant Imperial Irrigation District, May 23, 1940. All of the District's water supply has been received through the All-American Canal since February 14, 1942.

Water was first delivered through the All-American Canal to Coachella Valley County Water District in 1948. San Diego has never received service therefrom, but receives its water through the Colorado River Aqueduct.

The headworks of the All-American Canal at Imperial Dam have a capacity of 15,155 cubic feet per second. This initial capacity is maintained for 15 miles southward to "Syphon Drop," where 2000 cubic feet per second, carried for the Yuma Reclamation Project in Arizona (and 25,000 acres of the Yuma Project in California) is delivered to the Yuma Project, and to the Syphon Drop power plant, which is owned by the United States.

The All-American Canal maintains a capacity of 13,155 cubic feet per second for the next 7 miles, to Pilot Knob Check about one mile above the Mexican boundary. At this point, 3000 cubic feet per second and other canal capacity, when available, may be utilized for hydro power development at the Pilot Knob power plant, authorized by the Boulder Canyon Project Act to be constructed by the defendant Imperial Irrigation District, and such water will be discharged back into the Colorado River. Water passed through the Pilot Knob power plant or Pilot Knob Wasteway will go into the custody and control of the United States section of the International Boundary and Water Commission for disposal under the Mexican Water Treaty (Treaty Series 994).

The All-American Canal turns west below Pilot Knob Check to Imperial Valley, with a capacity of 10,155 cubic feet per second. Of this, 8500 is for defendant Imperial Irrigation District and 1500 for defendant Coachella Valley County Water District. The remainder, 155 cubic feet per second, is capacity reserved for and at the expense of defendant City of San Diego.

The cost of the All-American Canal, including Imperial Dam, for which the defendants Imperial Irrigation District and Coachella Valley County Water District are obligated to the United States, under repayment contracts referred to in the First Affirmative Defense, is $38,500,000. This is borne by them, in general, in proportion to the capacities of the sections of the works serving them. In addition, the defendant Coachella Valley County Water District is obligated to the United States in the additional amount of not to exceed $13,500,000, the cost of its distribution and other works. San Diego's share of the cost is about $500,000.

The gross area to be served by Imperial Irrigation District under the All-American Canal is approximately 1,000,000 acres, of which 900,000 acres are now within the boundaries of said District. The area within Coachella Valley County Water District is approximately 278,000 acres, of which an area of 135,000 acres is within the service area of the All-American Canal.

The total investment of Imperial Irrigation District and its municipalities, in works dependent upon the waters of the Colorado River System (including that District's obligations with respect to the All-American Canal) is not less than $62,000,000. These works include more than 1800 miles of main canals and laterals, nearly 1400 miles of drainage canals in Imperial Valley, some 130 miles of main canals, and 75 miles of river protective levees.

The irrigation, domestic and industrial water requirements of all the lands in Imperial Irrigation District, together with the municipal and industrial water requirements of some eleven cities and towns within that District, and the requirements of extensive military and defense bases, depend entirely upon the waters of the Colorado River System. There is no appreciable local rainfall, no usable underground water supply, and no other source of water available. The value of the agricultural production of the lands within Imperial Irrigation District amounted to $133,000,000 for the year 1952, and the very existence of the people, as well as the entire economy of the area within this District, is wholly dependent upon the wa-

ter supply from the Colorado River System through the All-American Canal.

The investment of Coachella Valley County Water District, its predecessors and landowners in all these works is not less than $33,000,000. The value of the agricultural production of Coachella Valley County Water District in 1952 was about $28,000,000, and its economy is dependent in substantial part upon the waters of the Colorado River System received through this canal.

The entire plan for the reclamation of all lands to be included within the Coachella Valley County Water District were well known to the Congress and to all of the interested States and Agencies in the Colorado River Basin long prior to 1929. The development, progressively as above outlined, in the reclamation of said area and the building of said dam, canal and works to the above indicated capacity, has been effected to the end of completing the project as originally planned; and the amount of water to which Imperial Irrigation District and Coachella Valley County Water District are entitled under their appropriations and contracts with the United States, as elsewhere herein recited, is the minimum amount required for the maintenance of said projects and the economy within said areas.

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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

No. 10 ORIGINAL

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

MOTION OF COLTER WATER PROJECT ASSOCIATION, INCORPORATED, FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

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OCTOBER TERM, 1952

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

MOTION OF COLTER WATER PROJECT ASSOCIATION, INCORPORATED, FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

I

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Comes now the Colter Water Project Association, Incorporated, a non-profit corporation organized under the laws of the State of Arizona, and respectfully moves this court for leave to file a brief amicus curiae in the above entitled cause.

The articles of incorporation of the Colter Water Project Association provide that it is organized for education regarding and promotion of the Fred T. Colter water applications or filings, made in the office of the State Land and Water

Commissioner of Arizona, beginning September 20, 1923, by which the waters and power of the Colorado River were appropriated for and on behalf of the State of Arizona and water users under the Glen-Bridge-Verde-Highline Project, to divert Colorado River water to Central Arizona and other areas of the state by exchange [1] in accordance with the statutes of the State of Arizona. [2] Members of the association include persons owning land now being farmed by irrigation, or capable of being so farmed, under said project within the State of Arizona. Members also include persons not necessarily landholders but in numerous other walks of life whose "welfare, prosperity, and happiness . . . are dependent on the appropriations in that state". [3]

This association made due request upon parties plaintiff and defendant for consent to the filing of a brief amicus curiae, and the same not being granted by all of the parties, hereby respectfully moves the court for leave to file such brief.

This association, and all others so interested in Arizona, are vitally concerned in this case. It is our desire to be assured that this case receives a full and complete hearing so that the State of Arizona and those claiming under it can begin to build for the future on a sound foundation supported by the decision and opinion of this court. This association prays this motion because we are impelled to be of help in this case. We desire

1. Water applications No. R-133, A-413, R-132, and amended applications thereafter, Office of Arizona State Land Commissioner.
2. Section 5337 of the Revised Statutes of 1913, Civil Code; Section 3281 of the Revised Code of 1928; Section 75-102 of the Arizona Code of 1939.
3. State of Wyoming v. Colorado (1922), 325 U.S. 468.

to point out not only the meaning of the facts in the complaint, but also the significance of facts omitted from it. It is our further desire to help to develop and establish facts as to equity which we believe the court will call for, since without such facts the court could not determine whether the Colorado River Compact provides equitable apportionment of the waters of the Colorado River.

II

FACTS AND ARGUMENT IN SUPPORT OF THE MOTION

1. AN INTERSTATE WATER COMPACT MUST BE EQUITABLE.

Equitable apportionment is the rule in litigation concerning water rights on interstate streams.[4] The apportionment may be made either by interstate compact with consent of Congress or by a decree of this court, and is binding upon the citizens of each state and all water claimants.[5] Where the apportionment is made by compact, the court has jurisdiction to determine its validity and effect.[6]

In determining the validity and effect of such a compact, the court has laid down certain standards which must be met. The outstanding case

4. Hinderlider, State Engineer, et al., v. La Plata River and Cherry Creek Ditch Co., 304 U.S. 101-103; Kansas v. Colorado, 206 U.S. 46, 97, Wyoming v. Colorado, 259 U.S. 419, 466; New Jersey v. New York, 283 U.S. 336, 342-43.

5. Hinderlider Case, supra; Poole v. Fleeger, 11 Pet. 185, 209; Garcia v. Lee, 12 Pet. 511, 521; Rhode Island v. Massachusetts, 12 Pet. 657, 725; Coffee v. Groover, 123 U.S. 1, 29, 30, 31; Virginia v. Tennessee, 148 U.S. 503, 525; Wyoming v. Colorado, 286 U.S. 494, 508.

6. Hinderlider, State Engineer, et al., v. La Plata River and Cherry Creek Ditch Co., 304 U.S. 110-111.

decided by this court, and so far as we have been able to discover, the only one in which a ratified interstate water division compact has been brought before the court for review, is Hinderlider, State Engineer et al. v. La Plata River & Cherry Creek Ditch Co. 304 U.S. 92.

In that case, the court allowed the La Plata River Compact between the States of Colorado and New Mexico to stand on the grounds that there was no vitiating infirmity in the proceedings leading up to the compact or in its application; that it afforded efficient, beneficial use of water without abuse of authority; that the compact was not arrived at without due inquiry, nor without honest exercise of judgment; that no claim had been made that it was or is inequitable; and that no water claimant had at any time objected to it. The court held that the evidence conclusively established that the waters of the stream could be used more efficiently under the rotation plan provided in the compact. In the words of the court:

"As Colorado possessed the right only to an equitable share of the water in the stream, the decree of January 12, 1898, in the Colorado water proceeding did not award to the ditch company any right greater than the equitable share. Hence the apportionment made by the compact can not have taken from the ditch company any vested right **unless there was in the proceedings leading up to the compact or in its application some vitiating infirmity. No such infirmity has been shown. There is no allegation in the pleadings, no evidence in the record, no suggestion in brief or argument,**

that the apportionment agreed upon by the commission was not entered into with due inquiry, or that it was not an honest exercise of judgment, or that it was or is inequitable. . . . There is no suggestion . . . even that any water claimant objected . . . and there is not even a suggestion that either state or the ditch company, has expressed a desire to modify or terminate it." **Hinderlider case, pages 108-109.** (Emphasis supplied).

It is clear then that a ratified interstate water compact to which Congress has consented is binding upon the citizens of the states party to it and upon water claimants **only if found equitable and valid by this court.**

2. FACTS AS TO EQUITY OF THE COLORADO RIVER COMPACT MUST BE BROUGHT TO THE ATTENTION OF THE COURT

In the Hinderlider case, supra, the court has laid down the principle and made the exception. The situation of Arizona meets the exception with respect to the Colorado River Compact. A full presentation of the facts will disclose that compact to be inequitable and invalid by the tests of this court.

The complaint herein, however, does not contain the facts upon which the court can find whether the Colorado River Compact is equitable or inequitable, and whether this compact otherwise meets the required standards set by the court. The complaint merely calls for a decision on the meanin of the compact.

Without ing as to its equity, by standards

which the court has emphasized, no final decree can result, since any aggrieved party can nevertheless raise the question of equity in a future suit, even though the states parties to the compact are not parties to such future suit. **Hinderlider case,** pages 110-111.

The purpose of this motion is to urge that these facts be brought to the attention of the court. It is not the intention of this motion to present any such facts exhaustively, nor as pleadings. But it is conceived to be our duty to the court and to the case to present a brief summary of some of the salient facts as to the equity of this compact which do not appear in the complaint. Such facts, and many others, should be brought into this case to aid the court in the determination of this subject.

3. BRIEF SUMMARY OF FACTS SHOWS THAT THE COLORADO RIVER COMPACT IS INEQUITABLE

(1) Vitiating infirmities of the Colorado River Compact and in the proceedings leading up to Arizona's ratification.

In 1944, the Arizona Legislature ratified the compact on the understanding that Arizona would receive between four and five million acre feet from the main Colorado River, **in addition to the waters of the Gila River.**[7] (Also see Appendix).

But in 1953, the complaint (page 30) seeks an interpretation of the compact by which Arizona's title would be quieted and confirmed to only 3,800,000 acre feet annually from the main Colorado

7. Message of the Governor of Arizona to the Special Session of the Arizona Legislature called to ratify the Colorado River Compact. Journal of the Senate, 16th Arizona Legislature, 1st Special Session, page 17.

River and its tributaries, **inclusive of the Gila River.** This is much less than was promised when the compact was ratified.

These facts show that **"there was some vitiating infirmity in the proceedings leading up to the compact or in its application"**, in the words of the **Hinderlider case,** supra. Such proceeding under the compact, which promised more by far at the time of ratification in 1944 than the complaint in this action in 1953 seeks for Arizona, does not meet the required standards of this court. It is self-evident that due inquiry was either lacking or not productive of facts, that judgment was misinformed even though honest, and that the transaction was not equitable to the people of Arizona who would be the real losers if **faith has not been kept with their representatives in the legislature.**

(2) Under the complaint's interpretation of the compact Central Arizona would be deprived of 35% of its cultivated land and of 80% of its agricultural pumping of underground water.

Should the prayer of the complaint be granted, Central Arizona will be compelled to take out of cultivation 343,920 acres, or 35% of its presently cultivated lands, and will be compelled to reduce its agricultural pumping of underground water by 2,760,000 acre feet annually, or by 80%.

The complaint (page 22), seeks supplemental water only from the Colorado River for 725,000 acres in Central Arizona. No irrigation of new lands is alleged. The Central Arizona Project and plan alleged in the complaint,[8] and water ap-

8. House Document No. 136, 81st Congress, 1st Session, Report and Findings, Central Arizona Project, Secretary of the Interior, Table B-23, pages 196-197; Bill of Complaint, page 22.

plications or filings therefor made December 28, 1951[9], disclose that only 639,680 acres would be allowed to remain in cultivation in these areas.[10]

But, during 1952, in the same areas, 984,000 acres of land were irrigated.[11] Thus, if the project is to be activated, 343,920 acres which were irrigated in 1952 must be taken out of cultivation and revert to the desert.

In regard to pumping of underground water, under the Central Arizona Project plan as alleged in the complaint herein, agricultural pumping in the central valleys of the state would be permanently reduced to 718,600 acre feet as the safe annual yield.[12] But during the year 1951, in this same area, 3,478,000 acre feet of water was pumped for agriculture from the underground supply.[13] The project plan further requires an underground water code to be adopted by the Arizona legislature to effect such a reduction.[14] Thus, under the project plan, Central Arizona will be compelled to reduce its agricultural pumping of underground waters by 2,760,000 acre feet, which, in turn, will result in taking presently cultivated lands out of cultivation.

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9. Bill of Complaint, page 24; Water Application No. 3180, Office of Arizona State Land Commissioner.
10. House Document No. 136, 81st Congress, 1st Session, Report and Findings Central Arizona Project, Secretary of the Interior, Table B-23, page 197.
11. Arizona Agriculture, 1953, Bulletin 245, Agriculture Experiment Station, University of Arizona, Tucson.
12. House Document No. 136, 81st Congress, 1st Session, Report and Findings Central Arizona Project, Secretary of the Interior, Table B-23, page 197.
13. Pumping and Ground Water Levels in Arizona in 1951, by L. S. Halpenny and R. L. Cushman, United States Geological Survey. Page 3.
14. Report on Central Arizona Project, United States Department of the Interior, December 1947, page 13.

(3) The Compact actually would deprive Central Arizona of 50% of its Cultivated Land and would give Arizona even less water than it now uses.

Under the interpretation of the compact alleged in the complaint (Page 22), Arizona claims 1,200,000 acre feet for diversion to Central Arizona from the Colorado River. But actually there is no additional water available for Arizona from the Colorado River under the compact and contract thereunder.[15] (Also see Appendix).

Without Colorado River water for this area, the loss to Arizona would be yet greater. The complaint itself states (page 22) that 31% of 725,000 acres now cultivated in the Central Arizona area would go out of cultivation, or 224,750 acres, leaving only 500,250 cultivated acres. Since in 1952, there were 984,000 acres in cultivation, the total reduction or loss would be 483,750 cultivated acres. This represents a loss of almost one-half of the state's irrigated agriculture, its main industry and principal support of its people. In addition, vast potential hydroelectric power and sites located in Arizona would be lost, being nowhere alleged or claimed in the complaint.

The population of Arizona has reached 900,000, doubled since the previous census, and is at the fastest rate of increase in the nation, including that of California. Where there is both priority of right and urgency of need, for Arizona to be deprived of additional water from its only river

15. See statement in Appendix by Governor R. C. Stanford of Arizona (1937); from Bill of Complaint, page 22, Arizona v. California, 283 U.S. 423 (1930); by Professor G. E. P. Smith, (1945); explanation of vote by V. P. Richards, (1944). Many others could be cited to the same effect.

system would be to receive an apportionment which is much less than equity demands.

The Colorado River Compact does not award Arizona an equitable share of the waters of the Colorado River, which this state would receive under the law of prior appropriation and beneficial use common to the seven participating states. Under the compact Arizona's Colorado River water would go in perpetuity to other Colorado River basin states and the Republic of Mexico, which abound in other rivers, and the hydroelectric power would go to distributors outside of Arizona. Such loss of Arizona's developed and potential natural resources would be enormous and unprecedented.

(4) **Complaint Fails to Claim Colorado River Water for Arizona Under the Colter Filings which would Rescue All Cultivated Lands in Central Arizona and reclaim much more in this area and throughout the state.**

The complaint (pages 22, 24) alleges the dire need of supplemental irrigation water for Central Arizona from the Colorado River, and **pleads the Central Arizona Project** applications or filings made in 1951 to appropriate such water for this purpose. The complaint, however, fails to inform the court that more than 28 years earlier, in 1923, the Colter water applications were made to divert much more Colorado River Water to Central Arizona and other areas of the state by exchange. [16] (Also see Appendix).

The Colter filings and projects thereunder have been kept up with due and reasonable diligence,

16. Water Applications No. R-133, A-413, R-132, and amended applications thereafter, Office of Arizona State Land Commissioner

in conformity with law, including all necessary engineering, technical, organizational, and other work necessary to develop a project of this magnitude, [17] as is evidenced by a record of eight volumes containing over 8000 pages.

Bills have been introduced in the Arizona legislature, including the current legislature, authorizing the construction of the Glen-Bridge-Verde-Highline Project under the Colter filings either under state authority or in cooperation with the federal government. [18]

Under the Central Arizona Project filings, the complaint claims 1,200,000 acre feet of supplemental water from the main stream of the Colorado River for 639,680 acres now irrigated in Central Arizona and no more would be allowed. [19]

But under the Colter filings more than 12,000,000 acre feet of water would be diverted from the main stream of the Colorado River through the all-gravity Glen-Bridge-Verde-Highline Project to irrigate 6,000,000 new acres, generate 5,000,000 electrical horsepower, and furnish supplemental water to all lands now cultivated in Central Arizona. Power revenues will more than pay for the construction of the project and for maximum irrigation and multiple purpose uses of the water throughout the state. [20] This project has been sup-

17. **Due Diligence in Protection and Development of Arizona Water Resources.** (Colter filings), 8 vols., Office of Arizona State Land Commissioner.

18. House Bill 21, Arizona House of Representatives, 21st Arizona Legislature, 1st Regular Session, 1953; House Bill 56, 20th Arizona Legislature, 2nd Regular Session, 1952; House Bill 83, 18th Arizona Legislature, Regular Session, 1947. Many others could be cited.

19. Bill of Complaint, page 22; House Document No. 136, 81st Congress, 1st Session, Report and Findings Central Arizona Project, Secretary of the Interior, Table B-23, page 196.

20. Water Applications No. R-133, A-413, R-132, and amended applications thereafter, Office of Arizona State Land Commissioner.

ported by those who consider that hydroelectric power as in the past should continue to help shoulder the financial burden of making reclamation possible in the west and is opposed by those whose views are to the contrary. The project under the Colter filings affords maximum beneficial use of Colorado River water not only for Arizona but also for the entire river system. It accords with all provisions and preferences of state and Federal law, as to beneficial use of water, and with all accepted engineering and conservational principles and practices.

4. A GENERAL ADJUDICATION SUIT IS THE METHOD TO ACHIEVE EQUITABLE APPORTIONMENT

The foregoing brief summary of some significant facts which do not appear in the complaint points to the conclusion that a more complete presentation would establish the fact that the Colorado River Compact is not equitable and does not meet the standards laid down by this court. For many years the people and water claimants of Arizona have objected to and continue to object to the terms of the compact on these grounds.[21] Since its ratification in 1944, its modification or repeal has been sought in the state legislature.[22]

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21. Petition of Fred T. Colter, et. al., to intervene, Arizona v. California (1936) 298 U.S. 558; motion of Sidney Kartus, et al. for leave to file petition to intervene in present case. Many other objections could be cited from 1922 to the present.

22. H.R.C. 11, introduced in the 17th Arizona Legislature, Regular Session (1945); H.R. 4, 18th Arizona Legislature, Regular Session (1947); H.B. 248, 19th Arizona Legislature, Regular Session, (1949); H.B. 165 in 1st Regular Session, 20th Arizona Legislature (1951); H.B. 185, in 1st Regular Session, 21st Arizona Legislature (1953). Many other measures introduced in the Arizona Legislature to repeal, modify, and protest the Colorado River Compact could be cited.

Were it not for the exceptions laid down by the court with respect to the validity of inter-state compacts, the people of Arizona would be without recourse or remedy against the inequities of the Colorado River Compact. The constitutional property rights of the citizens of each respective state are protected under provisions of the Federal constitution which make necessary that Congress give its consent to compacts between the states, and through review of such compacts by the court. There appears to be no difference between a compact and other legislation. The court cannot and rightfully has not relieved itself of the responsibility of deciding what is fair and reasonable, and what does not violate constitutional guarantees. The fact of obtaining Congressional approval does not alter this principle. Every decision by this court as to equitable apportionment of interstate waters leaves the door open to future review. There is no final conclusion and probably never will be with things of changing aspect. This is a fundamental truth which compacts with congressional consent cannot supersede. It seems obvious that interstate compacts cannot rise higher than the power which reviews them.

Upon the facts, the court can determine whether the Colorado River Compact is equitable. Your movant is earnestly of the belief, however, that the compact method, particularly as to interstate water division controversies in the reclamation states, is not preferable, and that its use in this manner was never contemplated by the framers of the constitution. If states can enter into compacts as an attribute of sovereignty, the converse must be true that they can withdraw from them

at will. This would make futile any court decree such as that sought in this case. In its most recent decision on this question, the court did not see fit to encourage the compact method. [23] The court decided the matter by litigation, and in its decree retained jurisdiction of the case for the purpose of modifying the decree at any time as might be deemed necessary. [24]

Your movant sincerely submits that the Colorado River controversy should likewise be decided by this court in a general adjudication suit quieting title to the water rights of all states and parties concerned, and not by an interpretation of the Colorado River Compact. By such a general adjudication suit Arizona would gain lasting and immeasurable benefits while injuring no other legitimate interests.

The passage of time over thirty years has proven that the young minority state of Arizona can expect to enjoy its just rights in the Colorado River only through equity and law. It is not interpretation of the Colorado River Compact but its dissolution by legislative repeal or by decree of this court and the quieting of titles in a general adjudication suit that will most equitably serve Arizona and all other states and parties concerned. Your movant earnestly submits this motion in the interest of equity and the most beneficial use of the Colorado River for the people of Arizona and all others concerned in the use of waters and power of this stream.

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23. Nebraska v. Wyoming (1945), 325 U.S. 589, 657, 658.
24. Nebraska v. Wyoming (1945), 325 U.S. 625.

III
CONCLUSION

The State of Arizona has the right to speak as parens patriae. But the legal fiction of parens patriae shall not be used in this case to impose an inequitable compact on Arizona, nor to deprive the people of Arizona of their full legal and equitable rights in this case, where the record shows:

(1) that the complaint does not contain the facts upon which the court can determine whether the compact is or is not equitable;

(2) that the complaint asks for an interpretation of the compact, regardless of whether it is equitable or not;

(3) that the nature of the case is such that it is imperative that such facts be brought to the attention of the court for a determination as to the equity of the compact. —

This is the very type of a case, then, in which the principle of a brief amicus curiae must be invoked.

WHEREFORE, the movant respectfully prays this Court for leave to file a brief amicus curiae.

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APPENDIX

Page 6, Note 7

From the message of Governor Sidney P. Osborn to the First Special Session of the Sixteenth Arizona Legislature, 1944, called for the purpose of ratifying the Colorado River Compact and contract subject thereto:

"The Gila River is ours—let's leave that out of consideration because we are using that water and it is ours and any Court in this world will so declare it. With the 2,800,000 acre feet out of the main stream and then one-half of the surplus—and we don't know yet what will be and no one can yet tell—I am confident that we will eventually get from the main stream of the Colorado River not less than four million acre feet a year, and probably as much as five million acre feet of water on Arizona lands . . .

. . . Our underground water supply is in danger of becoming depleted . . . But when we start pouring four million acre feet or more water into this underground reservoir every year, I am sure you will agree with me that today Arizona is on the threshold of the most marvelous development in its history, a development unexcelled in any state in the nation in the past . . .

. . . Of course, to effecctuate this contract it is necessary for the legislature to ratify the contract and ratify the compact, and I am in hopes that you will do that as speedily as possible . . ." Journal of the Senate, First Special Session, Sixteenth Arizona Legislature, 1944, Page 17.

Page 6, Note 7

From explanation of vote by Arizona State Senator Lloyd E. Canfil, on Senate Bill No. 2, for ratification of contract for waters from the Colorado River, subject to the Colorado River Compact:

"I intend to rely on Attorney Carson's assurance to the Senate that this is the best contract obtainable, that he made no concessions to California in this contract, and that the waters of the Gila River system are entirely exempted from the provisions of this contract and belong in toto to Arizona never to be counted against the allotment of 2,800,000 acre feet given our state by this contract, nor can they be counted against the surplus alloted.

"I am sure that this is the intent of the majority of the Senate in voting for this contract, and I hope that no future litigation will lend opportunity to any biased tri-

bunal to interpret this contract otherwise." . . . Ibid, Page 38.

Page 9, Note 15

From statement (Page 3) by Governor R. C. Stanford at Boulder Dam Power Conference before Secretary of the Interior, Washington, D. C. April 16, 1937: "Thus the (Colorado River) compact would allocate Arizona 700,000 acre feet less than it now uses . . ."

Page 9, Note 15

From Bill of Complaint, Page 22, Arizona v. California, 283 U. S. 423 (1930): "Said proposed apportionment of 2,800,000 acre feet of water is less than the quantity of water already appropriated in Arizona, and would provide no water for future appropriation in said state."

Page 9, Note 15

From speech by G. E. P. Smith, Professor of Agricultural Engineering, University of Arizona:

"Allotments of Colorado River water already made to other states and Mexico LEAVE NOTHING FOR FUTURE AUTHORIZATION IN ARIZONA, and the much-discussed plans for a great irrigation project, in the central part of the state cannot be made in fact, without a revision of the Colorado River Compact . . . There is no future allocation for Arizona. It is impossible to see it in that picture. It was 'cruel' to have Bureau of Reclamation officials last summer, travelling about the state, 'promising a 2,000,000 acre feet project for Central Arizona,' with part of the water for Florence and Casa Grande, releasing some Gila water for Safford. The only way, in which we can get future authorization, is through revision of the Colorado River Compact:" Arizona Builder & Contractor, May, 1945; From Arizona Daily Star, Tucson, Arizona, May 23, 1945.

Page 9, Note 15

From explanation of vote by Arizona State Senator V. P. Richards, on Senate Bill No. 2, for ratification of contract for waters from the Colorado River, subject to the Colorado River Compact:

"I am compelled to vote "No" because I am convinced that the ratification of this proposed contract will not provide one additional gallon of water to anyone in Arizona." Journal of the Senate, First Special Session, Sixteenth Arizona Legislature, Page 48. (1944).

Page 10, Note 16

This project was initiated in 1916, and in 1923, Fred T. Colter, then a State Senator, who was one of the founding fathers of the State of Arizona, and a member of its Constitutional Convention in 1912, made these filings. Colter did this on the authority of the then Governor of the State of Arizona, George W. P. Hunt, who himself had been President of the Constitutional Convention in 1912, and the first governor of the State of Arizona, and governor for seven terms. The State of Arizona has expended large sums of money for engineering and other work toward these filings. Colter continued as Trustee for these filings until his death in 1944, and Sidney Kartus is today successor to said Fred T. Colter as such Trustee.

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IN THE

Supreme Court of the United States

October Term, ~~1952~~ 1953

No. 10 Original

STATE OF ARIZONA

Complainant

v

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA.

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REPLY TO DEFENDANTS' ANSWER.

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Defendants

REPLY TO DEFENDANTS' ANSWER.

Complainant, by its duly authorized attorneys, replies to the Answer of Defendants herein as follows:

FOR A GENERAL REPLY TO THE ANSWER

I.

HISTORICAL BACKGROUND OF COLORADO RIVER COMPACT AND RELATED DOCUMENTS CONSTITUTING THE LAW OF THE RIVER.

A. INTRODUCTION

In their Answer to the Bill of Complaint, Defendants have set forth in some detail under the caption: "Historical and Geographical Background" some of the historical data constituting the law of the Colorado River. Many of those allegations are in no way pertinent to the issues involved in the instant case. Complainant will deal with a number of those allegations in more detail later on in this Reply, but for the information of the Court it submits that the pertinent historical background of the Colorado River Compact, (hereinafter called Compact) and the related documents constituting the law of the River is as follows:

B. GEOGRAPHICAL SITUATION

In Paragraph IV of Complainant's Bill of Complaint there is set forth in detail a description of the River, its length, its location and the area of each State within the natural basin of the River. The percentages of contribution of water to the Colorado River by the various States involved as measured at State lines are as follows:

Colorado	59.8%
Utah	14.6%
Arizona	12.1%
Wyoming	9.6%
New Mexico	2.9%
Nevada	0.7%
Mexico	0.2%
California	0.08%

California contributes practically no measurable quantity of water to the Colorado River System. Virtually all of the uses of Colorado River System water in California are outside of the natural drainage basin of the River. The only California uses that are within such natural drainage basin are in the Palo Verde Irrigation District (hereinafter called Palo Verde) and the Yuma Project in California. All uses of water within the area served by the Metropolitan Aqueduct, within the Imperial Irrigation District (hereinafter

called Imperial) and within the Coachella Valley County Water District, (hereinafter called Coachella) are served by transmountain diversions which take the water outside the natural basin of the Colorado River.

Filed with the Answer as Plate 1 in the Appendices thereto is a map which purports to show the boundary of the drainage basin of the Colorado River System. That map is in error as it purports to include within such drainage basin the Imperial Valley and Coachella Valley and surrounding areas in California, all of which drain into the Salton Sea. With this Reply Complainant presents as Appendix No. 1 a map which truly and accurately portrays the boundaries of the drainage basin of the Colorado River System.

The Gila River, a tributary of the Colorado River, flows exclusively within Arizona, with the exception of small tributaries in New Mexico, and reaches the Colorado River at a point near Yuma, Arizona. The geographical situation is such that the Gila River and its tributaries can be put to beneficial consumptive use, within the United States, only in Arizona and in a very limited area in New Mexico. The flow of the Gila River is extremely eccentric and variable. During most of the time the Gila, in many of its reaches, is dry. Water will rise to the surface, then disappear into the sands of the Gila and later come to the surface somewhere down the River. In some exceptional years the River will reach a flood stage, and it is only at those times that there is any appreciable flow from the Gila into the Colorado. In many years there is physically present in the Gila and its tributaries only enough water to permit the beneficial consumptive use of substantially less than 1,000,000 acre-feet.

C. COLORADO RIVER COMPACT

For some time prior to 1922 water was diverted from the mean stream of the Colorado River for irrigation of some land in Imperial, Palo Verde, and the Yuma Project in California. The water supply for these projects was unreliable in times of low flow. Imperial was in part inundated by a break in the Colorado River levee

system. These conditions were of great concern to California and caused that State to press for river regulation. In order that the River might be developed with due regard for the rights of all of the Basin States many conferences were held. These resulted in the creation of a commission composed of commissioners named by the governors of the various Basin States and a representative appointed by the President of the United States. Beginning in January, 1922, meetings were held in various parts of the United States. A final meeting took place in Santa Fe, New Mexico beginning on November 9, 1922 and ending on November 24, 1922, when the Compact was executed.

Early in the deliberations of the Commission it became apparent that any attempt to allocate the waters of the Colorado River System to individual States presented an insurmountable problem. By way of compromise it was agreed that the objective of the Commission should be limited to a division of the water between two basins.

In furtherance of this compromise there was drafted and submitted to the Commission on or about November 18, 1922, a proposed Compact which defined the Colorado River System so as to include the Gila River. This proposed definition was strenuously resisted by the Arizona Commissioner who refused to sign the proposed compact if it contained such definition. In order to satisfy the Arizona Commissioner and to secure unanimous approval of the Compact there was then prepared and inserted what is now Article III(b) thereof which apportioned an additional beneficial consumptive use of 1,000,000 acre-feet of water per year to the Lower Basin. This was solely and entirely for the purpose of recognizing the use by Arizona of approximately 1,000,000 acre-feet of water from the Gila River per year. That this was the understanding of the Arizona Commissioner is evidenced by the testimony introduced in the hearings of H.R. 5434 (80th Congress) at pages 367-377 of Vol. 2 (the bill for the reauthorization of the Gila Project). Pertinent excerpts from such testimony are included in Appendix

No. 2 to this Reply. In Appendix No. 3 to this Reply is a reproduction of an autographed photograph of Herbert Hoover complimenting Commissioner W. S. Norviel of Arizona on his fight for this additional 1,000,000 acre-feet of water. Excerpts from testimony of R. I. Meeker, who was engineering advisor for the State of Colorado during Compact negotiations, appear at pages 473-481 of the hearings on S. 1175 (80th Congress) and are found in Appendix No. 4 to this Reply.

Following the November 24, 1922 execution of the Compact, negotiations were undertaken by representatives of the States of Arizona, California, and Nevada to effect a Lower Basin compact.

When the Compact was being negotiated in the year 1922, there were in cultivation in Arizona approximately 415,451 acres of land. Practically all of this land was being irrigated by surface waters of the Colorado River and its tributaries in Arizona. This acreage increased until in the year 1929, the time of the Presidential Proclamation making the Compact effective, there were 481,853 acres in cultivation. In the year 1945 this cultivated acreage had increased to 688,648 acres. This increase was largely caused by the bringing into cultivation of land included in the Roosevelt Irrigation District, the Maricopa County Municipal Water Conservation District No. 1 (irrigated by water from the Agua Fria River, a tributary of the Gila), the Roosevelt Water Conservation District and the San Carlos Irrigation and Drainage District. These four districts have a total acreage of approximately 210,000 acres. Since that date the only considerable developments predicated upon the use of Colorado River System waters are the Wellton-Mohawk Irrigation District in Yuma County now under construction, and additional developments along the main stream of the Colorado River, particularly on the Fort Mohave and Colorado River Indian Reservations. Other increased agricultural development in Arizona is being served by deep wells, the operation of which does not deplete the main stream of the Colorado River or any of its tributaries. The area in cultivation in Arizona

in 1945 and the increased uses by reason of the Wellton-Mohawk Project and the Fort Mohave and Colorado River Indian Reservations are shown in Appendix No. 5 to this Reply.

D. BOULDER CANYON PROJECT ACT

For a long period prior to 1922 California greatly desired to secure river regulation, flood control, and hydroelectric power generation, and pressed Congress for legislation to attain this result. Beginning in the year 1922 a number of bills known as the "Swing-Johnson Bills" were introduced in Congress to authorize the construction of a dam at or near the site of the existing Hoover Dam. These efforts culminated in identical bills introduced in the House of Representatives on December 5, 1927, and in the Senate on December 6, 1927. The bill passed the House and was favorably recommended with amendments by the Senate Committee on Irrigation and Reclamation. It came before the Senate for consideration in December, 1928. Arizona Senators Hayden and Ashurst vigorously opposed the bill in the form in which it was presented. One of the reasons for such opposition was that there was no agreement among the Lower Basin States as to the division of water apportioned by the Compact to that Basin. Many amendments were suggested and many attempts were made to compromise the existing differences of opinion. The Upper Basin States opposed the bill in the form in which it was presented because they believed that the building of the proposed dam and canal would furnish California the opportunity to establish excessive uses of Colorado River System water to the detriment of future development in the other States of the Basin. The legislative history that preceded the final enactment of the bill was given by Senator Hayden in hearings on S.75 and S.J. Res. 4 (81st Congress) before the Senate Committee on Interior and Insular Affairs. Such testimony appears at pages 733-757 of the joint hearing on these matters and excerpts therefrom are included within Appendix No. 6 to this Reply. As stated by Senator Hayden, the bill was amended to include several important provisions

for the protection of the States of the Basin other than California. Among such provisions was that requiring the enactment of the California Limitation Act. The full text of this section appears at pages 12-15 of Appendix 2 to the Answer of the Defendants. The requirement for the California Limitation Act is specific, plain and unambiguous. California had to agree to limit its annual use of Colorado River System water to 4,400,000 acre-feet of the water apportioned by Article III (a) of the Compact and to not more than one-half of any excess or surplus water unapportioned by the Compact, and further that such uses must always be subject to the terms of the Compact. Also by Section 4 (a), Congress interpreted and construed the Compact by authorizing a Tri-State Compact whereby out of the 7,500,000 acre-feet apportioned by Article III (a) Nevada shall be entitled to 300,000 acre-feet and Arizona to 2,800,000 acre-feet, and whereby Arizona shall have the exclusive beneficial consumptive use of the water of the Gila River and its tributaries within that State. The essential provision of this authorized agreement appear on pages 13-14 of Appendix No. 2 to the Answer of the Defendants.

The Boulder Canyon Project Act, (hereinafter called Project Act) would never have been adopted except for the inclusion therein of the aforementioned provisions for the protection of the Basin States other than California. The California Legislature enacted the law containing the exact provisions required by said Section 4 (a) and limiting the California use of water to the extent stated therein. (Paragraph X of Complainant's Bill of Complaint sets forth the full text of this Act.)

E. ACTION BY ARIZONA ON THE PROPOSED TRI-STATE COMPACT

The proposed Tri-State Compact authorized by Section 4 (a) of the Project Act was before the Arizona Legislature in 1939 and such Legislature adopted and ratified that proposed Tri-State Compact and approved the Colorado River Compact upon condition that such ratification and approval would be effective if the Tri-

State Compact was ratified by California and Nevada within one year from the effective date of the Arizona Act or such later time as might be granted by the Arizona Governor (Arizona Code Annotated 1939, Section 75-1601 - 1603.). The full text of this statute appears in Appendix No. 7 to this Reply. California and Nevada did not ratify the proposed Tri-State Compact.

F. SUBSEQUENT ACTIONS

Other negotiations have been carried on in an attempt to settle the controversy. None of these negotiations has been successful. Also three unsuccessful attempts have been made by Arizona to secure a judicial solution of the controversy.

The United States Bureau of Reclamation during the years 1942-1948 expanded its Colorado River investigations to include possible additional uses of main stream water in Arizona. As a result of this investigation a report on the Central Arizona Project was made to and approved by the Secretary of the Interior. This report is contained in House Document 136, 81st Congress.

Under date of February 9, 1944, the Secretary of the Interior acting on behalf of the United States entered into a contract with Arizona whereby, subject to certain rights of New Mexico and Utah, Arizona was given the right to receive and put to beneficial consumptive use 2,800,000 acre-feet of main stream water to be delivered from Lake Mead storage, or to be diverted from the main stream and its tributaries above Lake Mead. This contract is set forth in full as Exhibit C to the Complainant's Bill of Complaint. As required by Paragraph 14 of that contract it and the Colorado River Compact were both unconditionally ratified by the Arizona Legislature on February 24, 1944 (see Appendix No. 8 to this Reply).

On October 11, 1948, the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, being the States of the Upper Basin as defined by Article II (f) of the Colorado River Compact, executed a compact which, among other things, apportioned among those states

the beneficial consumptive use of water apportioned to the Upper Basin by Article III (a) of the Colorado River Compact. This Upper Basin Compact specifically provides that it shall be subject to the provisions of the Colorado River Compact (see Upper Basin Compact, preamble, Art. I (b), Art. II (b), Art. III (a), and Art. IV (a)). Arizona ratified the Upper Basin Compact in 1949 (Chap. 4, Arizona Session Laws 1949). All the other states having ratified, the required Congressional consent was given by the Act of April 6, 1949 (Chap. 48, Public Law 37, 81st Congress, first session). In the Upper Basin Compact Arizona specifically reserved its rights "as a State of the Lower Division and as a State of the Lower Basin" (Art. XVIII (a)).

(Hereinafter, the paragraph numbers will in each instance be identical with the number of the Paragraph of the Answer to which Reply is made. Instances will occur in which a numbered Paragraph of the Answer contains no affirmative allegation and hence requires no Reply. This will result in the skipping of the number of such Paragraphs.)

REPLY TO FIRST AFFIRMATIVE DEFENSE

1.

(a) As to Paragraph 1, Complainant says that the allegations thereof descriptive of California projects, water uses, water needs, water rights and water development are immaterial and irrelevant to the issues of this case for the reason that the rights of California to the use of Colorado River System water are defined and limited by the Compact, the Project Act and the California Limitation Act.

(b) Further replying to said paragraph, Complainant admits that the defendants in this action are the State of California and public agencies of that State authorized to serve water to inhabitants and lands of the State. Denies that the rights claimed by the De-

fendants are in their entirety for projects already constructed and now operating. Additions, extensions, and enlargements of such projects are planned by the Defendants with full knowledge of the limitations imposed upon California uses of Colorado River System water by the Compact, the Project Act, and the California Limitation Act. The water supply to which California is limited by the terms of its Limitation Act is for all the constructed California projects to which reference is made in the Answer. The waters of the Colorado River System furnish only a small portion of the municipal water supply of the Los Angeles and San Diego areas. The water supply available to Southern California from other than Colorado River System sources and from the Colorado River System within the limitations of the California Limitation Act is ample to sustain a population and an agricultural and industrial production substantially greater than now exists.

(c) Arizona has numerous projects where the Colorado River System water to which it now seeks to quiet its title may be beneficially and advantageously used in Arizona. Among these contemplated projects are the Central Arizona Project, the undeveloped portions of the Gila Project as originally described in the finding of feasibility by the Secretary of the Interior dated June 21, 1937, and additional acreage along the Colorado River in Arizona including lands within the Colorado River Indian Reservation and the Fort Mohave Indian Reservation. Arizona does not seek to take water from constructed and operating California projects. Those projects are amply supplied by the quantity of Colorado River System water available to California under the Compact, the Project Act, and the California Limitation Act.

2.

(a) As to Paragraph 2, Complainant refers to and incorporates herein by reference Paragraph 1 (a) of its Reply to First Affirmative Defense.

(b) The facts stated in Paragraph 2 (a), as amplified by Plates 6A and 6B and Exhibit A, are admitted

except as herein specifically denied. The minimum water requirement of the Metropolitan Water District of Southern California is substantially less than 1,212,000 acre-feet per year. The greatest diversion of water made to date from the Colorado River System by the Metropolitan Water District was in 1951 and amounted to 210,310 acre-feet. The average diversion of Colorado River water by that District for the period 1930-1952 inclusive was 111,186 acre-feet per year. The contracts between the District and the United States contain the provisions set out in Paragraph XI (c) of the Complaint and do not create or constitute a right over and above that permitted by the Compact, Project Act, and the California Limitation Act. As heretofore alleged, the Metropolitan Water District and the area served thereby have other sources of water which when added to the Colorado River System water available to that District are ample to sustain not only the existing population, agriculture and industry, but also very substantial additions thereto. With particular reference to the City of Los Angeles the deliveries of Colorado River System water by the Colorado River Aqueduct for use in that city for the water years 1941 to 1952 inclusive have averaged 7,240 acre-feet per annum and the greatest delivery thereof occurred during the water year 1951-1952 and amounted to only 15,431 acre-feet. Complainant has no knowledge as to the amount of money that has been expended on water facilities to serve the area within the Metropolitan Water District and therefore denies the allegations relative thereto.

(c) The facts stated in Paragraph 2 (b), as amplified by Plate 3 and Exhibit B, are admitted except as herein specifically denied. The irrigated acreage within Palo Verde in 1952 amounted to 63,800 acres. Complainant has no knowledge as to whether Palo Verde is the oldest irrigated area in the Colorado River Basin or as to the amount of money which has been expended on water facilities to serve that area, and therefore denies the allegations relative thereto.

(d) The facts stated in Paragraph 2 (c), as amplified by Plates 4 and 5 and Exhibit C, are admitted ex-

cept as herein specifically denied. The irrigated acreage on the Yuma Project in California in 1952 was 11,839 acres. The irrigated acreage within Imperial in 1950 was 404,791 acres. The estimated irrigable acreage within Coachella is about 78,000 acres. The minimum water requirements of Palo Verde, the Yuma Project in California, Imperial and Coachella are substantially less than 4,150,000 acre-feet of water per annum. All of these districts, except Palo Verde, are served by the All-American Canal. The greatest diversion of water from the Colorado River System by the All-American Canal occurred in 1952 when 3,148,700 acre-feet were diverted for delivery to Imperial, and 495,800 acre-feet for delivery to Coachella. The average diversion of Colorado River System water by the All-American Canal for the period 1936-1952 inclusive was 2,705,908 acre-feet per year for Imperial, and for the period 1946-1952, 275,946 acre-feet per year for Coachella. All of the water diverted from the Colorado River by the All-American Canal is not put to beneficial consumptive use. There is wasted in the Salton Sea and not put to beneficial consumptive use quantities of water varying from 500,000 to 1,500,000 acre-feet per year. In determining the beneficial consumptive use of water diverted by the All-American Canal there must be deducted from the gross diversions the quantity of water wasted into the Salton Sea and not put to beneficial consumptive use. The appropriation rights, if any, of Palo Verde, Yuma Project in California, Imperial and Coachella have no bearing on the rights of those districts, or any of them, to receive Colorado River System water. Such rights to Colorado River System water exist by virtue of contracts made by the Secretary of the Interior pursuant to the Project Act. Such contracts of each of the districts contain the provisions set out in Paragraph XI (c) of the Complaint and do not in their total constitute a firm right to 4,150,000 acre-feet of water per year. The Complainant has no knowledge of the amount of money which has been expended on water facilities for the area served by the All-American Canal or of the amount of money which Imperial and Coachella will have to pay because of

the construction of such facilities and therefore denies the allegations relative thereto.

3.

(a) Admits Paragraph 3 (a) except as to the matters herein specifically denied. Denies that prior to 1920 appropriators in California and to a limited extent in Arizona had appropriated and put to use all of the natural flow of the main stream of the Colorado River which existed in the late summer irrigating season. Denies that any junior appropriators were interfering with uses under any senior appropriations in California or Arizona. Denies that satisfaction of any junior appropriations were dependent upon the construction of any storage works. Denies that the construction of the All-American Canal was of concern to all of the States of the Colorado River Basin. Alleges that the construction of the All-American Canal was of concern primarily to Imperial. Denies that the construction of the mentioned storage works was desired by or essential to all seven States of the Colorado River Basin. Alleges that such storage works were desired and actively promoted by Southern California and not by the basin states except California.

(b) Admits the allegations of Paragraph 3 (b).

4.

(a) As to Paragraph 4, Complainant refers to and incorporates herein Paragraph 1 (a) of its Reply to the First Affirmative Defense.

(b) The Complainant denies each and every allegation of Paragraph 4 (a) except as herein admitted. Admits that on November 24, 1922, irrigation distribution systems were in operation providing service to Palo Verde, Imperial, and the Yuma Project in California. Denies that said irrigation systems were complete. Denies that the acreage served was approximately 610,000 acres and alleges that as of said date the irrigated acreage so served did not exceed 461,000 acres and the beneficial consumptive use thereon of Colorado River System water did not exceed 2,350,000 acre-feet per year. On said date the Arizona irrigated acreage

served by water diverted from the main stream of the Colorado River amounted to 73,000 acres with appropriative rights for sufficient water to irrigate said acreage. On said date a substantially complete irrigation distribution system had been constructed in Arizona on the Gila River, a tributary of the Colorado River, to serve approximately 393,000 acres of land on which there was a beneficial consumptive use of the waters of the Gila River and its tributaries of 990,000 acre-feet per annum.

(c) Denies that on November 24, 1922, there were vested appropriative rights, valid under the laws of California, to the beneficial consumptive use of not less than 6,000,000 acre-feet of Colorado River System water per year. The appropriative rights in California as of that date are immaterial to the issues here. Such rights, if any, were and are merged into the contracts of the California districts with the Secretary of the Interior. The alleged California rights are limited by, and may not exceed, those existing by virtue of the contracts between the various California districts and the Secretary of the Interior. By the terms of each of said contracts the quantity of water to be delivered to the districts is subject to the availability of such water under the Compact and the Project Act. Allegations made by attorneys for Arizona in the case of Arizona v. California, 283 U. S. 423, are immaterial to the issues here. At the time of the presentation of said case to this Court Arizona had not ratified the Compact and had no contract with the Secretary of the Interior. Arizona has now ratified that Compact and has such a contract with the Secretary of the Interior. Its appropriative rights, whatever they may have been, are now subject to the availability of water under the Compact, the Project Act, and the Arizona contract with the Secretary of the Interior. As of November 24, 1922, the average annual beneficial consumptive use of water in Arizona from the Gila River and its tributaries amounted to 990,000 acre-feet of water per annum.

5.

As to Paragraph 5, Complainant admits the execution of the Compact as there alleged. Denies that Ari-

zona ever rejected or refused to ratify said Compact. Alleges that Arizona did ratify said Compact on February 24, 1944. Denies that the effect of the Compact, whether as a six-state compact or a seven-state compact, as pleaded in Paragraph 5 of the Answer or in any other portion of the Answer, is in conformity with the reports of the negotiators of said Compact or with the legislative history of the Project Act. Alleges that the reports of the Compact negotiators and the legislative history of the Project Act sustain the positions taken by the Complainant in its Bill of Complaint and in this Reply.

6.

Admits each and every allegation of Paragraph 6.

7.

As to Paragraph 7, Complainant admits that Article II of the Compact contains the definitions as set out in Exhibit A to the Complainant's Bill of Complaint (page 34). The Gila River which is a part of the Colorado River System rises partially in New Mexico and partially in Arizona. It flows across Arizona and joins the main stream of the Colorado River near Yuma, Arizona. Article III (b) was written into the Compact to compensate Arizona for its use of the waters of the Gila River and its tributaries. Prior to the execution of the Compact substantially all of the waters of the Gila River had been appropriated and put to beneficial consumptive use in Arizona. While the California areas served by the defendant districts are within the Colorado River Basin and the Lower Basin as defined by the Compact, such areas, except for a portion of the area served by the Palo Verde district and that portion served by the Yuma Project in California, are without the natural drainage basin of the Colorado River System and waters diverted from the Colorado River System for use in such areas do not return to the river but waters not consumptively used in such areas flow into the Salton Sea or the Pacific Ocean. (The natural drainage basin of the Colorado River and its tributaries is shown by Appendix No. 1).

8.

As to Paragraph 8, Complainant admits the allegations thereof except as specifically controverted herein. The apportionment made by Article III (a) of the Colorado River Compact does not include and was not intended to include, any of the waters of the Gila River or its tributaries. The 7,500,000 acre-feet of water per year apportioned to the Lower Basin by Article III (a) was and is within the water present in the main stream and measured at Lee Ferry, a point approximately 675 miles northerly and upstream from the confluence of the Gila River and the Colorado River. Denies that the term "beneficial consumptive use" ever had or now has the meaning alleged in said paragraph and further denies that such meaning was ever accepted or approved by the Compact negotiators or by the State legislatures which ratified the Compact, or by the Congress of the United States. Section 4 (a) of the Project Act defines "consumptive use" as "diversions less returns to the river." This does not and cannot mean that returns must be measured for each individual diversion. While diversions may be measured by the use of expensive recording devices which require the maintenance of a large and skilled staff, no method of the measurement of the extremely variable return flows has ever been devised. Return flows occur through drainage, seepage, and percolation. In a highly irrigated area, such as that existing in the basin of the Gila River and its tributaries, it is impossible to segregate the return flows from the various diversions. The only practical method of measuring beneficial consumptive use of water is by the net main stream depletion method. This was recognized by the negotiators of the Compact and by the negotiators of the Upper Colorado River Basin Compact. The definition of consumptive use as set forth in the Mexican Water Treaty was not intended to apply and does not apply to the apportionment made by the Compact. Arizona at all times has asserted, and now asserts, that it and New Mexico are entitled to the exclusive beneficial consumptive use of the waters of the Gila River and its tributaries measured in terms of main stream depletion. Such uses of the waters of the Gila

River and its tributaries are chargeable to the apportionment made by Article III (b) of the Compact and are only chargeable to the apportionment made by Article III (a) of the Compact to the extent that such uses exceed 1,000,000 acre-feet of water per annum. As of June 25, 1929 beneficial consumptive use of water of the Gila River and its tributaries was approximately 960,000 acre-feet. Such use now is estimated to amount to 1,170,000 acre-feet per annum. Admits that the words "per annum" as used in the Compact mean "each year" and not an average of uses over a period of years. Alleges that the meaning to be applied to the term "per annum" is not material to the issues of this case. From a practical standpoint beneficial consumptive use is most satisfactorily measured upon an average basis. Until such time as there is full use of the apportionment made by the Compact in either the Lower Basin or the Upper Basin, no issue is presented as to whether or not uses shall be measured annually or on an average.

9.

Admits every allegation of Paragraph 9 except those specifically controverted herein. Alleges that Article III (b) relates solely to the waters of the Gila River and its tributaries. Alleges that no States other than Arizona and New Mexico have any right to the use of the waters of the Gila River and its tributaries. California's contention that it may assert claims to water apportioned by Article III (b) is contrary to the construction placed thereon by the Arizona Legislature which ratified the Compact and by the Congress of the United States which gave its consent to the Compact. The beneficial consumptive use of water apportioned by Article III (b) is for the sole and exclusive use of Arizona and New Mexico.

10.

Complainant admits the allegations of Paragraph 10 except as herein controverted. Denies that, in the event there is a deficiency to supply the rights of Mexico to Colorado River System water, the beneficial consump-

tive use of water apportioned by Article III (b) of the Compact must be curtailed either partially or wholly before the beneficial consumptive use apportioned by Article III (a) is curtailed. When and if any curtailment of Lower Basin use is required to satisfy the Mexican right, then such curtailment must be of the use apportioned by Article III (a). Denies that the Gila River and its tributaries are subject to any obligations imposed by the Mexican Water Treaty. Alleges that the intent of Congress is shown by the provisions of the second paragraph of Section 4 (a) of the Project Act which provides that:

> "(3) the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico **."

11.

Admits the allegations of Paragraph 11 except as specifically denied herein. Denies that the quantity of 75,000,000 acre-feet specified in Article III (d) bears no quantitative relationship to the beneficial consumptive use of 7,500,000 acre-feet apportioned to either the Upper Basin or Lower Basin by Article III (a). Alleges that the 75,000,000 acre-feet specified in Article III (d) bears a direct quantitative relationship to the 7,500,000 acre-feet per year apportioned to the Lower Basin by Article III (a).

12.

Admits the allegations of Paragraph 12.

13.

Admits the allegations of Paragraph 13 except as denied herein. Denies the allegations of unnumbered subparagraph fourth of Paragraph 13. Alleges that the defendants, and none of them, have any firm rights

to the use of any waters of the Colorado River System which are surplus over that apportioned by Articles III (a), (b), and (c) of the Compact. No contract between the United States and any or all of the defendants can give the defendants or any of them any right to or claim upon such surplus water. No use of any of such surplus water by the defendants or any of them can give to the defendants or any of them any right to the continued use of such water.

14.

As to Paragraph 14, Complainant admits the provisions of Compact Article VII therein alleged. As to the other allegations of Paragraph 14, Complainant says that the facts are as stated in Paragraph XVIII of the Bill of Complaint. The rights of the Indians and Indian Tribes in or to the waters of the Colorado River System or the use thereof and the obligations of the United States to the Indians or Indian Tribes are not material or relevant to the determination of the issues presented in this case. In order to make certain that rights of Indians and Indian Tribes will not be adversely affected by this litigation, Complainant offers and firmly binds itself to stipulate with the other parties to this cause, including the intervenor the United States of America, that any decree to be entered herein may, if the Court approves, contain the following provisions so far as the rights of the Indians and Indian Tribes are concerned, to-wit:

"That the decree does not affirm, deny, validate, invalidate, or affect in any manner whatsoever any obligation or obligations of the United States of America to Indians and Indian Tribes and does not in any respect affect or deny the existence, validity or extent of such obligations; and that the decree is not intended to be and shall not be construed as establishing, validating, extending, inhibiting, or limiting existing Indian uses or the extent of rights or claims that may now exist or may hereafter be established or made by or on behalf of the Indians or Indian tribes in or to the waters of the Colorado

River System, or to the beneficial consumptive use thereof."

15.

Admits the allegations of Paragraph 15 except as denied herein. Denies that the term "unimpaired" as used in Article VIII of the Compact means unimpaired as to both quantity and quality. Alleges that said term means unimpaired as to quantity only. Denies that the defendants' rights existing on and prior to June 25, 1929 are as alleged in Paragraph 28 of the Answer and avers that such rights were and are as alleged in the Bill of Complaint and this Reply.

16.

Admits the allegations of Paragraph 16.

17.

As to Paragraph 17, admits that in the year 1923 the legislatures of California, Colorado, Nevada, New Mexico, Utah, and Wyoming ratified the proposed Compact. Denies that the Arizona Legislature rejected that Compact. Alleges that the Arizona Legislature ratified the Compact on February 24, 1944 (Appendix No. 8).

18.

As to Paragraph 18 alleges that the said governor had no authority or power to accept or reject the proposed Compact as that power and authority was vested solely in the Legislature of Arizona.

19.

As to Paragraph 19, Complainant says that as to the ratification of the Compact as a Six-State Compact prior to the enactment by California of its Limitation Act the facts are as stated herein and not otherwise. Colorado by its Act of February 26, 1925 waived the provisions of Article XI of the Compact, ratified said Compact and provided that the Compact should become effective:

" * * whenever at least six of the signatory states shall have consented thereto and the Congress of the United States shall have given its consent and ap-

proval, Provided, however, that this Act shall be of no force or effect until a similar Act or Resolution shall have been passed or adopted by the Legislatures of the States of California, Nevada, New Mexico, Utah, and Wyoming."

The Nevada Act of March 18, 1925, the New Mexico Act of March 17, 1925, the Utah Act of March 13, 1925, and the Wyoming Act of February 25, 1925 contained substantially identical language. The California Act of April 8, 1925 waived the provision of Article XI and ratified the Compact with the following proviso:

"* * * provided, however, that said Colorado River Compact shall not be binding or obligatory upon the State of California by this or any former approval thereof, or in any event until the President of the United States shall certify and declare (a) that the Congress of the United States has duly authorized and directed the construction by the United States of a dam in the main stream of the Colorado River, at or below Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water; and, (b) that the Congress of the United States has exercised the power and jurisdiction of the United States to make the terms of said Colorado River Compact binding and effective as to the waters of said Colorado River."

Until the enactment of the Project Act on December 21, 1928, there was no consent by the Congress of the United States to a Six-State Compact. The consent granted by the Project Act was conditioned upon ratification by all seven basin states within a six months period or upon ratification by six states including California, and the passage by California of an act limiting its uses in accordance with Section 4 (a) (2) of the Project Act. In either event a proclamation by the President of the United States was required to make the Compact effective. Prior to the enactment of the Project Act, Utah, by its Act of January 19, 1927, had repealed its aforementioned Act of March 13, 1925. On January 10, 1929, California ratified the Compact

as a Seven-State Compact. On March 4, 1929, California enacted its Limitation Act and ratified the Compact as a Six-State Compact. On that date there was no effective ratification of the Compact by Utah. On March 6, 1929, Utah ratified the Compact as a Six-State Compact. Upon such action by Utah, and not before, there was a compliance with the conditions established by the Project Act except for the requisite Presidential proclamation. On June 25, 1929, the President of the United States proclaimed the Compact effective. Until such proclamation by the President the Compact had no force and effect. In the effective ratification of the Compact by each of the Colorado River Basin States, in the California Limitation Act, in the grant of consent by Congress in the Project Act, and in the presidential proclamation of June 25, 1929, there was no inhibition against the ratification of the Compact by Arizona and there was no action which would deprive Arizona of the benefits to which it was entitled under either the Project Act or the California Limitation Act in the event that the Compact should thereafter be ratified by Arizona.

20.

Admits the allegations of Paragraph 20 except as herein specifically denied. Denies that the legislation referred to in the second unnumbered subparagraph of Paragraph 20 was solely for the purpose of making possible the construction of the projects there mentioned or to assure them an adequate water supply. Alleges that such legislation had many other purposes including the grant of consent to the Compact and the protection of the rights of and water uses in the various Colorado River Basin states. Denies that the legislative history of the Project Act supports the positions taken with reference thereto by the defendants in their answer. Alleges that the legislative history of that Act supports the position of the complainant as asserted in its bill of complaint and in this reply.

21.

Admits the allegations of Paragraph 21 except as specifiically denied herein. Denies that the term "ex-

cess or surplus waters unapportioned by said Compact" as used in the Project Act includes the increase of 1,000,000 acre-feet per annum permitted to the Lower Basin by Article III (b) of the Compact. Alleges that Article III (b) of the Compact pertains to the use of the waters of the Gila River and its tributaries and that the use of such waters is for the benefit of Arizona and New Mexico and the water users in these states. Alleges that Section 4 (a) of the Project Act as originally presented to the Senate Committee on Irrigation and Reclamation, 70th Congress, First Session in S. 1274 read as follows:

> "Sec. 4 (a) No work shall be begun and no moneys expended on or in connection with the works or structures provided for in this act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures until the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have approved the Colorado River Compact mentioned in Section 12 hereof."

The Arizona Senators refused to accept or approve the bill in such form. Thereafter, to protect Arizona and the other Colorado River Basin states, except California, Section 4 (a) was amended and passed in the form appearing in Appendix 2 to the Answer, pp. 12-13. The effect of the Project Act as so enacted into law and of the subsequent California Limitation Act is as stated in Paragraphs XXIV and XXV of the Bill of Complaint.

22.

Admits the allegations of Paragraph 22 except as specifically denied herein. Admits that the Secretary of the Interior made contracts with the defendants as alleged in the last sentence of the first unnumbered subparagraph of Paragraph 22 but alleges that such contracts, and each and all of them, create in the defendants no rights to the use of water in excess of the rights to which California is limited by its Limitation Act.

Alleges that the Secretary has made a contract with Arizona for the delivery to and use by Arizona of 2,800,000 acre-feet of main stream water plus one-half of the surplus or excess water unapportioned by the Compact. Such contract with Arizona, in accordance with the Project Act and the California Limitation Act, leaves Arizona free to use, in addition to the quantities of water stated in said contract, 1,000,000 acre-feet per annum of the waters of the Gila River and its tributaries.

Denies Section 4 (a) (1) of the Project Act recognizes any right in California to the use of any water covered by Article III (b) of the Compact. Denies that the so-called Tri-State Agreement authorized by the second paragraph of Section 4 (a) of the Project Act recognizes "an allocation to Arizona of one-half of any excess or surplus waters unapportioned by Article III (a) of the Colorado River Compact." Alleges that such recognized allocation to Arizona includes "one-half of the excess or surplus waters unapportioned by the Colorado River Compact." The use of the water covered by Article III (b) of the Compact is apportioned. The term "excess or surplus waters" does not include and was not intended to include the use of any of the water referred to in Article III (b) of the Compact. It was the intent of the Project Act and the California Limitation Act to deny to California and its water users any rights to the use of water apportioned by Article III (b). Admits that the so-called Tri-State Agreement proposed by the second paragraph of the Project Act makes no provisions for uses by Utah and New Mexico, which States are partly within the Lower Basin. Arizona has recognized in its Complaint that its rights to the use of 3,800,000 acre-feet of water per year plus one-half of the excess or surplus waters unapportioned by the Compact are subject to the rights of Utah and New Mexico as Lower Basin States.

By act of its Legislature in 1939 (Arizona Code Annotated, Secs. 75-1601 to 75-1603 inclusive) Arizona ratified the Tri-State Compact authorized by the second paragraph of Section 4 (a) of the Project Act

upon the condition that the States of California and Nevada ratify such proposed Tri-State Compact. Both California and Nevada failed to ratify such Tri-State Compact. Such 1939 Act of the Arizona Legislature appears as Appendix No. 7 of this Reply. Said 1939 Act of the Arizona Legislature also ratified the Compact without reservation but upon the condition that the Tri-State Compact be ratified by California and Nevada within the time fixed by such Act.

23.

Admits the allegations of Paragraph 23.

24.

Admits the allegations of Paragraph 24. Alleges that the California Limitation Act is not and was not conditioned either upon the ratification or the non-ratification of the Colorado River Compact by Arizona. The limitations imposed by said Act are and were unconditional and are now, and at all times since its enactment have been, binding upon California and all of its water users.

25.

Admits the allegations of Paragraph 25.

26.

Admits the allegations of Paragraph 26 except that it denies that the effect of the Act therein referred to is as stated in Paragraph 59 of the Traverse in the Defendants' Answer.

27.

Denies the allegations of Paragraph 27. Alleges that the effect of the Compact, the Project Act, and the California Limitation Act is as stated in the Bill of Complaint and in this Reply.

28.

(a) As to Paragraph 28, Complainant refers to and incorporates herein by reference Paragraph 1 (a) of its Reply to the First Affirmative Defense.

(b) Denies the allegations of Paragraph 28. Alleges that on June 25, 1929, projects had been constructed and were in operation in California for the irrigation of no more than 473,500 acres of land which required a net main stream depletion of about 2,902,000 acre-feet of water per annum. The maximum quantity of Colorado River System water reasonably required by Palo Verde, the Colorado River Aqueduct and the All-American Canal at this time is not in excess of 3,663,000 acre-feet per annum. All uses of Colorado River System water in California are limited by the Project Act and California Limitation Act as averred in the Complaint and in this Reply. Appropriative rights, if any, to the use of Colorado River System water under California law are not binding upon the United States, Arizona or any other Colorado River Basin State except California. Such rights, if any, were and are merged into the contracts between the California districts and the United States and are subject to the provisions of the Compact, Project Act, and Limitation Act.

29.

Admits the allegations of Paragraph 29 except that it denies that the contracts therein mentioned conclusively provide for the payment of any fixed sum on account of the cost of the Imperial Dam and All-American Canal, and alleges that there is as yet no definite agreement between the United States and the California entities for the repayment of such costs. The effect of the contracts mentioned in Paragraph 29 is as set forth in the Bill of Complaint and in this Reply.

30.

Admits the allegations of Paragraph 30 except that it alleges that the effect of the contracts therein mentioned is as set forth in the Bill of Complaint and in this Reply.

31.

Admits the allegations of Paragraph 31.

32.

Admits the allegations of Paragraph 32 except that it denies that any so-called Statutory Compact relative to the use of the waters of the Colorado River System now exists or ever existed between the United States and California. Colorado River System water is available for use in California only pursuant to and in compliance with the Compact, the Project Act, and the California Limitation Act. The Seven Party Water Agreement is without any validity, force, or effect whatsoever to create any rights in California or in any of its water users to the use of Colorado River System Water in excess of 4,400,000 acre-feet per year.

33.

As to Paragraph 33, admits that the Secretary of the Interior promulgated the amended general regulations therein mentioned and that such regulations are now in full force and effect. Denies all other allegations of Paragraph 33. Alleges that such general regulations and the amendments thereto cannot and do not increase the quantity of water available for use in California under the Compact, the Project Act, and the California Limitation Act.

34.

Admits that the United States has made the contracts with the defendant Districts therein alleged and denies all other allegations of said paragraph. Alleges that the effect of said contracts is as set forth in the Bill of Complaint and in this Reply.

35.

Denies the allegations of Paragraph 35 except that it admits the existence of the so-called "Agreement of Compromise between the Imperial Irrigation District and the Coachella Valley County Water District," and admits that the rights of the Districts therein mentioned to the use of Colorado River System water are each and all subject to the availability thereof under the Compact, the Project Act, and the California Limitation Act.

36.

Denies all the allegations of Paragraph 36. Alleges that the use of Colorado River System water within the State of California is limited by the Project Act and the Limitation Act to the quantities of water therein mentioned and that no contracts between the United States and the Metropolitan District, or any other California contracting entity, and no contract between the California contracting entities can create any right to the use in California of more than 4,400,000 acre-feet of water per annum apportioned by Article III (a) of the Compact plus not more than one-half of the excess or surplus waters unapportioned by said Compact. The 1,000,000 acre-feet of water referred to in Article III (b) is not available for use in California and is not included within the term "surplus or excess water." Rights to the use of surplus or excess water have never been determined and cannot be determined until after October 1, 1963.

37.

(a) As to Paragraph 37, Complainant refers to and incorporates herein by reference Paragraph 1 (a) of its Reply to the First Affirmative Defense.

(b) Alleges that as to the use by California of 4,400,000 acre-feet of water apportioned by Article III (a) of the Compact and the use by Arizona of 2,800,000 acre-feet of water apportioned by Article III (a) of the Compact and as to the use by Nevada of 300,000 acre-feet of water apportioned by Article III (a) of the Compact, the contracts between the United States and the California contracting entities, the contract between the United States and Arizona, and the contract between the United States and Nevada are on a parity. No one of said contracts has any priority or any preferential rights over any other contract. All pertain to the apportionment of III (a) water. So far as the California contracts provide for the delivery of more than 4,400,000 acre-feet of water per annum, such contracts relate to "surplus or excess water" and the reference is to water which is surplus or excess over that apportioned by Article III (a), (b), and (c.) Such surplus

may not be determined or apportioned until after October 1, 1963. The contract between the United States and Arizona is paramount and superior to any claims by California for the use of Colorado River System water in excess of 4,400,000 acre-feet per annum.

REPLY TO SECOND AFFIRMATIVE DEFENSE

38.

Paragraph 38 of the Answer incorporates by reference all the allegations of the First Affirmative Defense (Paragraphs 1 to 37 inclusive). The plaintiff in reply incorporates by reference its reply to said paragraphs 1 to 37 inclusive.

39.

(a) As to Paragraph 39 (a) admits that California ratified the Compact as a Six-State Compact and denies each and every other allegation thereof. California has ratified the Compact as a Seven-State Compact and as a Six-State Compact. The legislative history of the ratification of said Compact by California discloses that

(1) California ratified the Compact as a Seven-State Compact on February 3, 1923 (Act of February 3, 1923; Ch. 17, 45th Session; Statutes and Amendments to the Codes, 1923, pp. 1530-1535;

(2) California conditionally ratified the Compact as a Six-State Compact on April 8, 1925 (Act of April 8, 1925; Ch. 33, 46th Session; Statutes and Amendments to the Codes, 1925, pp. 1321-1322);

(3) California again ratified the Compact as a Seven-State Compact on January 10, 1929 (Act of January 10, 1929; Ch. 1, 48th Session, Statues and Amendments to the Codes, 1929, pp. 1-7);

(4) California ratified the Compact as a Six-State Compact on March 4, 1929 (Act of March 4, 1929; Ch. 15, 48th Session; Statutes and Amendments to the Codes, 1929, pp. 37-38);

The California Limitation Act was enacted March 4, 1929, the same date as the ratification of the Compact by California by the Act referred to in (4) above. Such Act, referred to in (4) above, provides in part;

"* * * and said Compact shall become binding and obligatory upon the State of California, and upon the other signatory states which have *ratified or may hereafter ratify said Compact when at least six of the signatory states shall have consented thereto, approved and ratified the same,* and the Congress of the United States shall have given its consent and approval; * * *." (emphasis supplied)

The Project Act was enacted December 21, 1928. Section 4 (a) thereof provides in substance that the Act shall not become effective until the seven Colorado River Basin states shall have ratified the Compact and the President of the United States shall have so publicly proclaimed or "if said states fail to ratify the said Compact within six months from the date of the passage of this Act" then until six states, including California, ratify the Compact and the President of the United States so publicly proclaims and the State of California passes an act limiting its uses as therein stated. Section 13 (a) of the Project Act provides:

"The Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to act of Congress approved August 19, 1921, entitled "An act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of Article II of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have

approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided."

On June 25, 1929, the President of the United States proclaimed the Compact effective. There is nothing in the ratification of the Compact by California, or by any other state, or by the United States which precludes Arizona from ratifying said Compact. The California Limitation Act was enacted "for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming" as an express covenant and in consideration of the passage of the Project Act. There is no provision in the California Limitation Act that its provisions shall not be effective in the event Arizona ratifies the Compact. There is no provision in the Project Act that the conditions imposed by Section 4 (a) shall not be effective when and if Arizona ratifies the Compact after the expiration of the six-month period therein mentioned. There is no provision in the legislative action of any of the states of Colorado, Nevada, New Mexico, Utah, or Wyoming which destroys or in any way affects the ratification of the Compact by any of such states in the event that California passed its Limitation Act and Arizona ratified the Compact after six months from the effective date of the Project Act. By its action in passing its Limitation Act and ratifying the Compact as a Six-state Compact within less than three months after the passage of the Boulder Canyon Project Act and more than three months before the expiration of the six months period mentioned in Section 4 (a) of the Project Act, California intended that the provisions of the said Limitation Act should be effective regardless of whether Arizona thereafter ratified said Compact.

(b) Denies the allegation of Paragraph 39 (b). California could not have passed its Limitation Act only because of the alleged rejection of the Compact by Arizona because the six months period specified in Section 4 (a) of the Project Act had not half expired at the time of the enactment of the California Limitation Act. California enacted the Limitation Act because it de-

sired the construction of Hoover Dam, the All-American Canal and the other facilities authorized by the Project Act. Neither the ratification nor the non-ratification of the Compact by Arizona was any inducement to California in its enactment of the said Limitation Act.

(c) Denies the allegations of Paragraph 39 (c). As a result of the passage of the Project Act and the California Limitation Act and the ratification of the Compact the defendants received the benefits averred in Paragraph XXIV of the Complaint.

(d) Denies the allegations of Paragraph 39 (d).

40.

As to Paragraph 40 admits that the three original actions in the United States Supreme Court referred to in said paragraph were instituted by Arizona. The issues presented therein and the decisions of the Court thereon are as stated in the opinions of the Court reported at 283 U. S. 423, 292 U. S. 341, and 298 U. S. 558. All of said actions were brought and determined before Arizona ratified the Compact and before Arizona had entered into a water delivery contract with the United States (Exhibit C to Complaint). In none of said cases could Arizona rely upon or receive any benefit from the Compact or related documents. Admits that the pleadings and briefs of Arizona in the case decided in 283 U. S. 423 contained the extracts appearing at pages 386-399, Appendix 28 to Answer. None of said allegations or statements are material to the issues presented in the instant case. Denies all allegations of said Paragraph 40 not herein specifically admitted.

41.

As to Paragraph 41, admits that the capacities of the water facilities therein mentioned and the terms of the contracts therein averred were reported to the excutive and legislative branches of the United States Government. Denies that there ever has been any administrative or legislative construction by the United

States of the Compact and related documents which conflicts with the construction of those documents set forth in the Bill of Complaint and in this Reply. Denies all allegations of Paragraph 41 not herein specifically admitted.

Further replying to Paragraph 41, Complainant alleges that the Congress of the United States by its enactment of the Project Act and the Secretary of the Interior of the United States by his execution of the February 9, 1944 water contract with Arizona have construed the Compact and the rights of Arizona as follows:

(1) Arizona has the right to the beneficial consumptive use of 2,800,000 acre-feet of water diverted from the main stream of the Colorado River either above or below Hoover Dam subject only to the rights of Utah and New Mexico as Lower Basin States.

(2) If and when any surplus waters of the Colorado River System unapportioned by Article III (a), (b), and (c) of the Compact are apportioned to the Lower Basin, Arizona shall be entitled to one-half thereof less a quantity not to exceed one-twenty-fifth of the total to the State of Nevada and less whatever rights Utah and New Mexico may have in and to such surplus.

(3) Arizona has the right to the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of Arizona.

(4) The waters of the Gila River and its tributaries except return flow after the same enters the Colorado River shall never be subject to any diminution by reason of any allowance of water by treaty to Mexico.

Further replying to Paragraph 41, Complainant says that the 1949 action of Congress in granting its consent to the Upper Colorado River Basin Compact constitutes a recognition by Congress of the fact that Arizona is a party to the Colorado River Compact of 1922 and a reaffirmation by the Congress of the integrity of the

Colorado River Compact and its related statutes both state and Federal, including the California Limitation Act.

42.

(a) Denies the allegations of Paragraph 42 (a).

(b) As to Paragraph 42 (b) denies that the defendants took any of the actions therein mentioned in reliance upon any action or non-action by Arizona. The defendants were motivated entirely by a desire to obtain the construction and use of the facilities made possible by the Compact, the Project Act, and the California Limitation Act. Denies that the defendants, or any of them, have underwritten all the cost of Hoover Dam. Alleges that substantially all of the construction costs of Hoover Dam will be repaid by revenues derived from charges imposed upon the use of falling water for the production of hydroelectric power which is sold to Lower Basin consumers at rates substantially less than electric power generated by fuel can be produced and sold.

Denies that the defendants have developed an economy which is dependent upon the construction of the Compact and related documents as set forth in their Answer. Alleges that the Defendants each and all well knew that but for the enactment of the Project Act and the California Limitation Act, the Compact would not have become effective and well knew that said Limitation Act was passed for the benefit of Arizona and the other Colorado River Basin States except California. Denies that either the defendants, or any of them, or the Congress or the executive officers of the United States took any action whatsoever in reliance upon any action or non-action or representation or interpretation of Arizona. Alleges that all actions by the defendants and by the United States in connection with the development of the water resources of the Lower Colorado River Basin were taken in reliance upon the terms, conditions, and provisions of the Compact, the Project Act, and the California Limitation Act as construed

and applied in the Bill of Complaint and in this Reply. Denies all allegations of Paragraph 42 (b) not herein specifically admitted.

(c) Denies the allegations of Paragraph 42 (c).

REPLY TO THIRD AFFIRMATIVE DEFENSE

FOR A FIRST REPLY TO THE THIRD AFFIRMATIVE DEFENSE.

Complainant says that any and all allegations as to the so-called appropriative rights of California and its water users are immaterial and irrelevant to any consideration or determination of the issues in the instant case for the reasons that:

(1) Appropriative rights, if any, under California law are not binding upon the United States, the State of Arizona or any other Colorado River Basin State except the State of California.

(2) Whatever rights California and any of its water users may have had at any time to the use of the waters of the Colorado River System are now, and at all times since the effective date of the Compact have been, subject to the terms of the Compact, the Project Act, and the California Limitation Act.

(3) Any rights to the use of Colorado River System water are also subject to the terms and provisions of the various contracts between the Secretary of the Interior and the contracting California entities.

FOR A SECOND REPLY TO THE THIRD AFFIRMATIVE DEFENSE.

43.

Paragraph 43 of the Answer incorporates by reference all the allegations of the First and Second Affirmative Defenses (Paragraph 1 to 42 inclusive). The Complainant in reply incorporates by reference its Reply to said Paragraphs 1 to 42 inclusive.

44.

(a) As to Paragraph 44 (a), admits that there are approximately 120,500 acres within the boundaries of Palo Verde. This includes 16,000 acres of Mesa land which can only be served by a pump system which has not as yet been constructed. Of the total acreage only about 64,000 acres were irrigated in 1952 and only a total of 75,000 acres are irrigable. The Complainant is without knowledge or information as to the year when water was first diverted from the Colorado River System for use within the Palo Verde area and is without knowledge or information as to whether or not water has been continuously diverted for use in said area after the year in which the first diversions occurred. Palo Verde has entered into a contract with the United States for the delivery to that District of water from the Colorado River System. Such contract makes the delivery of water contingent upon the availability thereof under the Compact and the Project Act. Any and all use of Colorado River System water by Palo Verde is subject to the California Limitation Act. Admits that the District and its predecessors in title have constructed some works to divert and use water from the Colorado River System and that some works are now in operation for this purpose. Complainant is without knowledge or information as to the extent of such works or as to the facts concerning the operation thereof. Denies all allegations of Paragraph 44 (a) not specifically herein admitted.

(b) As to Paragraph 44 (b), admits that there are approximately 25,000 acres of land under the Yuma Project in California. A part of such land, the exact quantity thereof being unknown to the Complainant, lies within Indian Reservations. Of this total acreage approximately 12,000 acres are irrigable and in 1952, there were irrigated approximately 12,000 acres. Admits the statutes referred to in Paragraph 44 (b), but denies their applicability to any issues presented for determination in this case. Complainant is without knowledge or information as to the appropriative rights, if any, of the Yuma Project in California under the laws of Cali-

fornia, as to the year when water was first diverted from the Colorado River System for use on the Yuma Project in California, and as to whether water has been continuously diverted for use in said area after the year in which the first diversion occurred. The Yuma Project in California is irrigated by water diverted from the Colorado River System by the All-American Canal. The right to take Colorado River System water through the All-American Canal is contingent upon the availability of such under the Compact and the Project Act. Any and all use of Colorado River System water by or in the Yuma Project in California is subject to the California Limitation Act. Complainant denies all allegations in Paragraph 44 (b) not herein specifically admitted.

(c) As to Paragraph 44 (c), admits that there are approximately 900,000 acres within the boundaries of Imperial. Complainant has no knowledge as to whether said District is committed to include 90,000 acres or any part thereof in addition thereto. The said area of 900,000 acres includes approximately 325,000 acres in the areas known as East Mesa and West Mesa. No distribution systems have ever been constructed to serve the lands located on either the East Mesa or West Mesa. The Bureau of Reclamation, in a joint study with the University of California, has reported adversely on the irrigation of either the East Mesa or the West Mesa because of poor soil conditions. Of the total acreage within the District there is a maximum of about 600,000 acres of irrigable land and of this, approximately 400,000 acres were actually irrigated in the year 1950. The Complainant is without knowledge or information as to the appropriative rights, if any, of Imperial under the laws of the State of California, as to when water was first diverted from the Colorado River System for use within the District, and as to whether water has been continuously diverted for use in said area after the year in which the first diversion occurred. Imperial has entered into contracts with the United States for the delivery

to that District of water from the Colorado River System. Such contracts make the delivery of water contingent upon the availability thereof under the Compact and the Project Act. Any and all use of Colorado River System water by or in Imperial is subject to the California Limitation Act. Complainant admits that the District and its predecessors in title and its water users have constructed some works to divert and use water from the Colorado River System and that some works are now in operation for this purpose. Complainant is without knowledge or information as to the extent of such works, or as to the fact concerning the operation thereof. Denies all allegations of Paragraph 44 (c) not specifically admitted herein.

(d) As to Paragraph 44 (d), Complainant is without knowledge or information as to the total number of acres within the boundaries of Coachella. Alleges that the project of the United States Bureau of Reclamation for the irrigation of lands within Coachella contemplates the irrigation of only 78,000 acres of such land. Complainant has no knowledge or information as to the quantity of land now irrigated within Coachella. Complainant is without knowledge or information as to the appropriative rights, if any, of Coachella under the California law, as to when water was first diverted from the Colorado River System for use within Coachella, and as to whether water has been continuously diverted for use within said area after the year within which the first diversion occurred. Coachella has entered into a contract with the United States for the delivery of water from the Colorado River System. Such contract makes the delivery of water contingent upon the availability thereof under the Compact and the Project Act. Any and all uses of Colorado River System water by or in Coachella is subject to the California Limitation Act. Admits that Coachella, its predecessors and property owners have constructed some works to divert and use water from the Colorado River System and that some works are now in operation for this purpose. Complainant is without knowledge or information as to the extent of such works, or as to the

facts concerning the operation thereof. Denies all allegations of paragraph 44 (d) not specifically admitted herein.

(e) Denies all the allegations of Paragraph 44 (e) except that it admits the existence of the August 18, 1931 agreement and the February 14, 1934 agreement of compromise between Imperial and Coachella. The legal effect of such agreements is immaterial and irrelevent to the issues of this case. All uses of Colorado River System waters within California are controlled by the Compact, the Project Act, and the California Limitation Act.

45.

(a) As to Paragraph 45 (a) admits that the City of Los Angeles is within The Metropolitan Water District of Southern California. The Complainant is without knowledge or information as to the appropriative rights, if any, of the City of Los Angeles or The Metropolitan Water District under the laws of California and as to the commencement of construction of works for the diversion of Colorado River System water for use in the Los Angeles area. The use of Colorado River System water by The Metropolitan Water District and by the cities and communities within that District is governed by contracts between that District and the Secretary of the Interior. The delivery of water thereunder is subject to the availability thereof under the Compact and the Project Act. Any and all uses of Colorado River System water by or in the City of Los Angeles are subject to the California Limitation Act. Denies all allegations of Paragraph 45 (a) not specifically admitted.

(b) As to Paragraph 45 (b), Complainant admits that the City of San Diego is now included within The Metropolitan Water District of Southern California and that a portion of the County of San Diego is also within that District. Complainant is without knowledge or information as to the appropriative rights, if any, of the City of San Diego, County of San Diego, or the Metropolitan Water District under the laws of Cali-

fornia. Admits the existence of the October 4, 1946 agreement between the City of San Diego, County of San Diego, San Diego County Water Authority, and The Metropolitan Water District. The legal effect of such agreement is immaterial and irrelevant to the issues of this case. Any and all uses of Colorado River System water by or in either the City of San Diego or the County of San Diego are subject to the California Limitation Act. Denies all allegations of Paragraph 45 (b) not herein specifically admitted.

(c) As to Paragraph 45 (c), Complainant admits a number of cities, districts, and other entities are included within The Metropolitan Water District of Southern California but Complainant has no knowledge or information as to the number or extent thereof. Complainant has no knowledge or information as to the appropriative rights, if any, of the Cities of Los Angeles and San Diego for the use of water of the Colorado River System, as to whether or not such alleged rights are now administered by The Metropolitan District or as to the appropriations, if any, by The Metropolitan District of waters of the Colorado River System. Complainant is further without knowledge or information as to when the first diversion of water from the Colorado River System was made within The Metropolitan Water District area and as to whether Colorado River System water has been continuously used in said area since the year in which the first diversion occurred. Any and all uses of Colorado River System water by or in The Metropolitan Water District are subject to the California Limitation Act. Denies all allegations of Paragraph 45 (c) not herein specifically admitted.

(d) Complainant admits that The Metropolitan Water District and the Cities of Los Angeles and San Diego have constructed some works to divert and use water from the Colorado River and that some works are now in operation for this purpose. Complainant is without knowledge or information as to the extent of such works or as to the facts concerning the operation thereof. Denies all allegations of Paragraph 45 (d) not herein specifically admitted.

COLORADO RIVER DRAINAGE BASIN

0 100

SCALE OF MILES

WYOMING

GREEN RIVER

GREAT SALT LAKE

SALT LAKE CITY

UTAH LAKE

GREEN R.

DENVER

COLORADO R.

NEV.

UTAH

COLO.

N

RIVER

SAN JUAN R.

BASIN

LEE FERRY

UPPER

SAN JUAN R.

46.

Denies all the allegations of Paragraph 46. Alleges that all uses of Colorado River water within California are governed by the Compact, the Project Act, and the California Limitation Act. Appropriative rights, if any, to the use of Colorado River System water in California, are not binding upon Arizona or any other Colorado River Basin State and are immaterial to any issue presented in this case.

47.

As to Paragraph 47, Complainant admits that the appropriations of Colorado River System water for beneficial consumptive use on the Yuma Project in Arizona, portions of the Colorado River Indian Reservation, and miscellaneous uses from the main stream and tributaries of the Colorado River, including the Gila River, are prior to claimed appropriations of the Defendants. Denies that the beneficial consumptive use of the waters of the Gila River and its tributaries in Arizona is 2,000,000 acre-feet per annum, and alleges that the beneficial consumptive use of the waters of the Gila River and its tributaries in Arizona is as set forth in the Bill of Complaint and in this Reply. Denies the allegations of Paragraph 47 not heretofore expressly admitted. Alleges that all uses of Colorado River System water within California are governed by the Compact, the Project Act, and the California Limitation Act. Appropriative rights, if any, to the use of Colorado River System water in California are not binding upon the United States, Arizona, or any other Colorado River Basin state; and are immaterial to any issue presented in this case.

REPLY TO FOURTH AFFIRMATIVE DEFENSE.

48.

Paragraph 48 of the Answer incorporates by reference all the allegations of the First, Second, and Third Affirmative Defenses (Paragraphs 1 to 47 inclusive).

The complainant in reply incorporates by reference its Reply to said Paragraphs 1 to 47 inclusive.

49.

As to Paragraph 49 alleges that the question of the indispensability of the United States as a party to this case is now moot as the United States has sought and been granted leave to intervene.

50.

As to Paragraph 50, admits that the United States has been granted leave to intervene in this case. All parties whose presence is essential to a determination of this case are now before the Court.

REPLY TO AFFIRMATIVE ALLEGATIONS CONTAINED IN TRAVERSE

57.

As to Paragraph 57 (b), admits the execution and existence of the Seven-Party Agreement. Complainant is without knowledge or information as to the purpose of that agreement. Alleges that insofar as said agreement attempts to apportion among the California water users any rights to the consumptive use of Colorado River System water in excess of 4,400,000 acre-feet per year it was and is without any force, effect, or validity whatsoever. Denies all of the allegations of Paragraph 57 (b) not specifically admitted herein.

As to Paragraph 57 (d), denies that the defendants have or own rights to the use of the quantities of Colorado River System water therein set forth. Alleges that the defendants collectively have no firm right to use any Colorado River System water in excess of 4,400,000 acre-feet per year. The quantities of Colorado River System water unapportioned by Article III (a), (b), and (c) of the Compact have never been determined and may not be apportioned until after October 1, 1963. Denies all allegations of Paragraph 57 (d) not specifically admitted herein.

58.

As to Paragraph 58 (a), admits the affirmative allegations therein relating to Hoover, Parker and Davis Dams.

As to Paragraph 58 (b), alleges that the facilities therein referred to store, take and divert water only from the main stream of the Colorado River and none of them store, take or divert any water from the Gila River or any of its tributaries. Admits all other allegations of Paragraph 58 (b).

As to Paragraph 58 (c), admits that the facilities mentioned therein have the physical capacity to divert Colorado River System water greatly in excess of 4,400,000 acre-feet per year. Denies that the defendants, or any of them, have any firm right to take, divert, and use more than 4,400,000 acre-feet of Colorado River System water per year. Alleges that the quantity of surplus or excess water has never been determined and under the Compact may not be determined until after October 1, 1963. Denies that any claim of California or any of its water users to 5,362,000 acre-feet of water per year from the Colorado River System or to any quantity of water from the Colorado River System in excess of 4,400,000 acre-feet per year is rightful or that any of the defendants are lawfully entitled thereto. California and its water users have only the right to use such of the waters of the Colorado River System as are available to them under the Compact, the Project Act, and the California Limitation Act.

59.

As to Paragraph 59 (c), denies the execution, existence, and validity of the so-called Statutory Compact. Denies that the interpretation, intent, and effect of the Compact as set out in the First Affirmative Defense and as relied on by California are in conformity with the text of that document, the legislative history thereof, or the contemporaneous interpretations thereof. The intent, meaning, and effect of that Compact is as set forth in the Bill of Complaint and in this Reply, and the intent, meaning and effect so relied on by Arizona is in

conformity with the intent of the Congress of the United States as expressed in the Project Act, and in conformity with the intent of the Secretary of the Interior as shown by his execution of the February 9, 1944 Arizona water contract. Alleges that any interpretations presented by Arizona in the case of Arizona v. California, 283 U. S. 423, are irrelevant and immaterial to the issues herein presented because such case was presented and determined prior to the ratification of the Compact by Arizona and the execution by Arizona and the Secretary of the Interior of the Arizona water contract. Denies that Arizona rejected the Compact. Denies each and every allegation of Paragraph 59 (c) not specifically admitted herein.

As to Paragraph 59 (d), denies the execution, existence, or validity of the so-called Statutory Compact. Alleges that Arizona in this action seeks to establish its rights as they exist under the Compact, the Project Act, and the California Limitation Act, which Limitation Act was passed for the benefit of Arizona and other Basin States, and that Arizona is entitled to receive such benefit. Denies all allegations of Paragraph 59 (d) not specifically admitted herein.

As to Paragraph 59 (e), admits the allegations thereof. Alleges that the quotation from the Arizona contract therein referred to is only a partial quotation. The full text of the Arizona Water Contract appears as Exhibit C to the Bill of Complaint.

60.

As to Paragraph 60, admits the existence of the March 30, 1942 and January 3, 1944 contracts between the United States and the State of Nevada pertaining to the delivery of Colorado River System water for use in Nevada in a quantity not to exceed 300,000 acre-feet per year. Complainant has no knowledge or information as to whether Nevada has contended that its rights to the use of Colorado River System water are not limited to 300,000 acre-feet per year or any other specific quantity, or as to legislation for the authorization of projects in Nevada requiring an aggregate annual

beneficial consumptive use of more than 300,000 acre-feet of Colorado River System water per year.

61.

As to Paragraph 61, admits that the rights of New Mexico and Utah to the use of Colorado River System water apportioned by the Compact to the Lower Basin have never been determined. Denies that there are any present or potential controversies between Arizona and either Utah or New Mexico over the use of waters of the Colorado River apportioned by the Compact to the Lower Basin.

62.

As to Paragraph 62, admits the allegations thereof except that it denies that the term "any and all sources" as used in the Mexican Water Treaty means the entire Colorado River System. Alleges that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, are not subject to any diminution whatever by reason of the Mexican Water Treaty.

63.

As to Paragraph 63, alleges that there is available to Arizona, Nevada, New Mexico, and Utah out of the waters of the Colorado River System apportioned to the Lower Basin by the Compact the beneficial consumptive use of a total of 4,100,000 acre-feet of water per year. This includes the use of the waters of the Gila River and its tributaries. In addition said States have a right to an undetermined quantity of surplus water not apportioned by the Compact. Any and all rights to the use in the Lower Basin of main stream water are subject to a charge for losses from main stream Lower Basin reservoirs in the same proportion as the consumptive use of such storage water in each State bears to the total consumptive use of such storage water in the Lower Basin, and to a charge in some undetermined amount if and when some diminution of uses in the Lower Basin is required to satisfy the Mexican Water Treaty. Unless and until there is some need for curtailment to satisfy the Mexican Water Treaty

and until the facts under which such curtailment is required can be known, there is and can be no determination of the charge, if any, to be imposed by reason of the Mexican Water Treaty. The share of beneficial consumptive use of Colorado River System water in the Lower Basin to which Arizona, New Mexico, and Utah are entitled has been determined and is the quantity of 3,800,000 acre-feet of water per year. Likewise the share to which Nevada is entitled has been determined and is the quantity of 300,000 acre-feet of water per year. Denies all allegations of Paragraph 63 not specifically admitted herein.

64.

As to Paragraph 64, admits that the provisions of Article 7(a), 7(b), 7(d), 7(j) and 7(l) of the February 9, 1944 water contract between the United States and Arizona are as set forth in Exhibit C to the Bill of Complaint, pp. 47-50. Denies that any of said provisions relates to the rights of Indians or Indian Tribes. As to the other allegations of Paragraph 64, Complainant refers to, and by this reference incorporates herein, its reply to Paragraph 14 of the First Affirmative Defense.

65.

As to Paragraph 65, denies that there are known and defined underground sources of water in Arizona which are dependent upon the Colorado River System for water. Complainant has no knowledge or information as to the contributions, if any, of said underground water basins to the Colorado River System. Denies that the beneficial consumptive use of water by Arizona water users from underground water sources are chargeable to Arizona against its share of Colorado River System water. The use of water from underground water sources in Arizona is a beneficial consumptive use of water which would otherwise be unavailable for use either in Arizona or any other portion of the Lower Basin. Admits that there has been expansion of irrigated acreage in Arizona since 1944 and that this has occurred in part from leasing and sale of State owned lands. Denies that such expansion has occurred

with knowledge of the inadequacy of the water supply. Denies that Arizona has failed to enact effective legislation to control the use of the underground water supply, and alleges Arizona has enacted legislation for the purpose of controlling the use of underground water. Denies that there has been any reckless or speculative expansion of irrigated acreage in Arizona or waste of water in Arizona. Denies that the water supply presently available to the Central Arizona area is ample to sustain a population and industrial and agricultural production greater than that which now exists and alleges that the water supply is insufficient to sustain the present population and industrial and agricultural production. Alleges that the effect of a failure to secure a greater quantity of water for the Central Arizona area than that now available will have the effects alleged in Paragraphs XIX and XXVII of the Complaint.

As to the allegations relative to the reports of the Secretary of the Interior on the Central Arizona Project, Complainant says that none of such allegations is material or relevant to the issues presented for determination in this case.

66.

As to Paragraph 66, Complainant admits that the congressional actions therein mentioned occurred but denies that such actions, or any of them, resulted from the matters and things alleged in said Paragraph 66. Alleges that the United States Bureau of Reclamation has found that the Central Arizona Project has both engineering and economic feasibility. Denies the allegations of Paragraph 66 not specifically admitted herein.

70.

As to Paragraph 70, admits that the facilities therein mentioned were constructed under the terms, provisions, and limitations of the laws and treaty therein mentioned. Alleges that none of such facilities would have been constructed but for the Compact, the Project Act, and the California Limitation Act. Admits that the

defendants have used such facilities and have benefited therefrom, and that to the extent averred in the Bill of Complaint and in this Reply Arizona has benefited therefrom. Complainant does not deny the validity or integrity of the Compact, the Project Act, or California Limitation Act, and to the contrary the Complainant in its Bill of Complaint and Reply asserts and relies upon the validity and integrity of the Compact, the Project Act, and the California Limitation Act. Denies all allegations of Paragraph 70 not herein specifically admitted.

72.

As to Paragraph 72, alleges that by the use of the facilities therein mentioned the defendants have acquired no firm right to take and divert from the Colorado River System any quantities of water in excess of 4,400,000 acre-feet per year. The fact that such facilities are designed to take and divert more than that quantity of water does not create in the defendants, or any of them, any rights to the use of the waters of the Colorado River System in excess of 4,400,000 acre-feet of water per year. Complainant admits that the diversions stated for the year 1946-1952 inclusive are substantially correct. Admits that such quantities are greater than the beneficial consumptive uses of such water in California, and that such quantities are subject to diminution in the amount that the diversions would not result in net main stream depletions in the quantities of water so diverted. Alleges that the returns to the stream from such diversions have never been determined. Denies that all of the diversions remaining after the deductions above mentioned were or are being put to beneficial consumptive use in California. Alleges that there is wasted in the Salton Sea and not put to beneficial consumptive use quantities of water varying from 500,000 to 1,500,000 acre-feet per year, and that there are substantial quantities of Colorado River water wasted into the Pacific Ocean. Admits the intent of the defendants as stated in Paragraph 72 but alleges that such intent is wrongful and not in conformity with the Compact, the Project Act, and the Cali-

fornia Limitation Act. Denies all allegations in Paragraph 72 not specifically admitted.

75.

As to Paragraph 75, Complainant alleges that it is entitled to the relief sought in its Bill of Complaint.

REPLY TO MATTERS CONTAINED IN EXHIBITS, APPENDICES, AND PLATES.

As to Exhibits A, B, and C to the Answer, Complainant alleges that the allegations thereof have no material bearing on the issues tendered by the Bill of Complaint, the Answer and this Reply. Complainant alleges that the rights of the defendants and each of them to the use of the waters of the Colorado River System are subject to the availability thereof under the Compact, the Project Act, and the California Limitation Act. Such rights are neither enlarged nor diminished by the facts averred in the said Exhibits. Insofar as the facts set out in said Exhibits are different from the facts alleged in the Bill of Complaint and in this Reply, the Complainant neither admits nor denies them but relies on its position that they are immaterial, irrelevent, and incompetent to either prove or disprove any of the issues presented by the instant case. Insofar as the conclusions of either fact or law set forth in said Exhibits are concerned the Complainant denies each and all of them except such as are specifically admitted in the Bill of Complaint and in this Reply.

II

Complainant admits that Appendices Nos. 1 to 27 inclusive to the Answer correctly state the provisions of the various matters therein copied. Alleges that the effect of the pertinent compact, statutes, regulations,

agreements, and contracts contained in said appendices are as stated in the Bill of Complaint and in this Reply and not otherwise.

Admits that the pleadings and briefs of Arizona in the case of Arizona vs. California, 283 U. S. 423, contain the matters appearing in Appendix No. 28. Denies Appendix No. 28 contains all the pleadings and briefs in that case. Alleges that none of the pleadings and briefs in that case is material to this case.

Complainant denies the accuracy of the map appearing on Plate 1. Such map incorrectly shows the Imperial and Coachella Valleys within the natural drainage basin of the Colorado River System. The Imperial and Coachella Valleys actually drain into the Salton Sea and do not drain into the Colorado River or any of its tributaries.

Admits that the maps shown by Plates 2 to 6B inclusive are substantially accurate, but reserves the right to rely on different or other maps if the proper presentation of this case requires.

FOR FURTHER REPLY

Complainant denies each and every affirmative allegation of the Answer not specifically admitted in this Reply.

WHEREFORE, Complainant prays as in its Bill of Complaint except that Complainant says that, through inadvertence, Paragraph VI of the Prayer of the Bill of Complaint is inaccurate and does not conform to the allegations of Paragraph XXII (3) of the Bill of Complaint or with the allegations of Paragraph 63 of this Reply. In place of such Paragraph VI the Complainant prays that:

> Losses of water in and from reservoirs located in the Lower Basin on the main stream of the Colorado River shall be charged against the apportionment to Arizona and California respectively in the same proportion as the consumptive use of water delivered

from storage in such Reservoirs in the State against which the charge is made currently bears to the total consumptive use in the Lower Basin of water delivered from storage in such Reservoir.

Respectfully submitted,

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER
Assistant Counsel,
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PERRY M. LING
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ROSS F. JONES
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APPENDIX No. 2

Excerpts From

"HEARINGS BEFORE THE COMMITTEE ON IRRIGATION AND RECLAMATION, HOUSE OF REPRESENTATIVES, SEVENTY-NINTH CONGRESS, SECOND SESSION, ON **H. R. 5434**, A BILL REAUTHORIZING THE GILA FEDERAL RECLAMATION PROJECT, AND FOR OTHER PURPOSES, PART 2, JULY 8-22, 1946;"

STATEMENT OF CHARLES A. CARSON, SPECIAL ATTORNEY, STATE OF ARIZONA, ON COLORADO RIVER MATTERS, PHOENIX, ARIZONA

Mr. CARSON. Yes, Mr. Chairman. My name is Charles A. Carson, of Phoenix, Ariz., appearing here on behalf of the State of Arizona as special attorney for the State of Arizona in connection with Colorado River matters, under an act of the Arizona Legislature, which authorized the Governor to appoint attorneys and engineers.

There has been so much said here on the question and so many questions interjected here that I would like, if I can, to make a kind of a general geographical and historical statement without interruption in order to get it clear in this record as to Arizona's view on these matters.

Chairman MURDOCK. The witness may proceed to make a connected statement without interruption. Of course, there will be questions later.

Mr. CARSON. Yes; as soon as I am through.

Mr. WHITE. That was apparently for the ranking member on the Democratic side, was it not, Mr. Chairman?

Chairman MURDOCK. The matter about asking questions, well, no, not altogether.

Mr. CARSON. I wanted to call your attention to the map on the wall there of the Colorado River Basin.

This map on the wall represents by this outline the natural drainage basin of the Colorado River system, with the one exception that down here on the California side of the river it also takes in an area which comprises the Imperial irrigation district, the Coachella Valley, the Metropolitan water district area, and the county of San Diego. That is not a natural part of the Colorado River Basin. The basin line at that point is indicated with this dotted line [indicating on map]. This map [indicating] does not show the areas in the upper basin outside of the natural drainage area of the basin from which water may be utilized.

The definition of the Colorado River compact takes into account not only the natural drainage basin but also areas upon which water from the basin might be utilized, and in that connection it is interesting to note that the natural drainage basin comprises some 240,000 square miles, of which Arizona contains 103,000 square miles; California, 4,000 square miles; Nevada, 12,000 square miles; Utah, 40,000 square miles; New Mexico, 23,000 square miles; Colorado, 39,000 square miles; and Wyoming, 19,000 square miles.

This history of the controversies concerning the Colorado River is not particularly important for the consideration of this bill, it seems to me, with some notable exceptions.

The first development, aside from a small development in the Palo Verde area was at Blythe, and the Yuma project, both in California and in Arizona was begun about 1895 by some California financiers who owned land in the Imperial Valley of California and in the Mexicali Valley of Old Mexico, and at that time they initiated the right to divert water through the old Alamo Canal through Mexico for the use of the Imperial Valley and also for the use of the Mexican land.

That contract provided that, of the water flowing through that canal, Mexico should be entitled to one-half.

The plan involved in the filing of water rights and in the operation contemplated a canal of 10,000 cubic feet

per second capacity, which, if it ran all year, would be some 7,000,000 acre-feet of water, of which Mexico would be entitled to one half.

Then coming on down, the material thing, it seems to me, to this issue is this: Remember at that time, if you please, that Arizona was a territory. In the early stages of this Arizona had not acquired the status of statehood, and did not acquire that status until 1912 when the Constitution of Arizona was adopted in accordance with the enabling act of Congress passed in 1910.

In that enabling act there is a significant provision, the United States required that Arizona by its constitution agree that the United States withdraw from entry and reserve all of the power dam sites on the Colorado River across the State of Arizona with the right to withdraw and reserve the lands bordering that stream across the State of Arizona, which Arizona did by the adoption of its constitution. So that Arizona has never had the ordinary rights enjoyed by the other basin States to control or to build or operate dams and diversion works from the Colorado River.

It has always been my thought that those provisions were inserted there for the protection of the development of the Imperial Valley and the Mexican lands then owned by California financiers.

Mr. Harry Chandler, of the Los Angeles Times, testified in 1924 before this committee that at that time he and his associates owned 833,000 acres of land in Mexico immediately below the border, of which some 600,000 acres were irrigable from the water of the Colorado River.

Now, keep that in mind, if you please. The canal right gave them the right, assuming continuous flow, to the use of 3,500,000 acre-feet in Mexico. This 600,000 acres of land had a diversion right, assuming 5 acre-feet per acre, which would make 3,000,000 acre-feet of water of the Colorado River going to Mexico, and the restrictions placed upon Arizona at the time of its admittance as a State and in the constitution assured those people, I assume, or, at least, they thought it did,

that Arizona could not divert water from the main stream of the Colorado River without the consent of Congress.

Well, Arizona became a State in 1912.

The next point I want to go to is the Colorado River compact that was signed at Santa Fe, N. Mex. in 1922. It was not ratified by Arizona, nor by the other States so as to make it effective until June, or approximately June 1929.

At that conference attempts were first made to divide the water between the States, and no agreement could be reached. Finally an agreement was reached dividing the water between the upper basin and the lower basin at Lee Ferry. They did not undertake to divide at that time all of the water of the stream because at that time it was calculated that the average annual flow was greatly in excess of the 15,000,000 acre-feet that was divided, 7,500,000 acre-feet to the Upper Basin, and 7,500,000 acre-feet to the lower basin.

Mr. PHILLIPS. That was in 1929?

Mr. CARSON. 1922 was when the compact was written.

At that conference, Arizona's representative, Mr. W. S. Norviel, was concerned because the over-all definition of the Colorado River system, as contained in the compact, did include and does now include the Gila River and its tributaries in Arizona which enter the river at Yuma below a point where they can ever be used again in the United States, and which were at that time wholly appropriated. So, Mr. Norviel refused to affix his signature to that compact until the provisions were written into the compact that are in article 3 (b) of the compact, which were added after this first draft had been completed and accepted by all the other States. I will read article 3 (b) for the record:

In addition to the apportionment in paragraph (a) the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre-feet per annum.

Which was then the estimated use then being made of the Gila River. He would not sign it then until there

was an oral understanding, not binding but an oral understanding and agreement between the States of California, Arizona, and Nevada, and accepted by all of the people attending that conference, that when that conference adjourned they would undertake to write out a tri-State compact between Arizona, California, and Nevada apportioning the water allocated to the lower basin, and in that compact or contemplated tri-State compact, provide that the exclusive beneficial consumptive use of the water of the Gila River should go to Arizona.

At this point I would like to insert in the record a letter and a picture, a letter from Mr. Herbert Hoover, who was chairman of that conference to Mr. W. S. Norviel, and a picture of Mr. Hoover also sent to Mr. Norviel, the picture carrying this notation. "W. S. Norviel, from Herbert Hoover—in tribute to a million acre-feet and a fine associate." The letter reads:

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

LOS ANGELES, CALIF., *November 26, 1922.*

Mr. W. S. NORVIEL,
State Engineer, Phoenix, Ariz.

MY DEAR NORVIEL: This is just by way of registering again my feelings of admiration for the best fighter on the commission. Arizona should erect a monument to you and entitle it "One million acre-feet."

I am sending you herewith a photograph which does not purport to be a likeness but it is a better-looking fellow than the one you have, and I send it as an excuse for writing this letter expressing my personal appreciation of this fine association which we have had.

Faithfully yours,

HERBERT HOOVER.

Mr. ROCKWELL. What is the date of that?

Mr. CARSON. November 26, 1922. The compact was signed in Santa Fe, N. Mex., November 24, 1922.

Mr. ROCKWELL. I thought you said something about the fact that it was not signed until 1929?

Mr. CARSON. The compact was signed at Santa Fe, N. Mex., November 22, 1922. It required ratification by the various States and the Congress before it could become effective, which was not brought about until 1929.

Then I should also like to put in the record the testimony of Gov. Thomas E. Campbell, who was then Governor of Arizona and in attendance upon this Santa Fe conference, given before the Colorado River Commission of Arizona in 1933 or 1934; I think it was 1933.

Mr. PHILLIPS. What is the document from which you are reading?

Mr. CARSON. I am reading from a brief that I prepared in 1934 for submission to the Secretary of the Interior, but which was not in fact filed with the Secretary.

Chairman MURDOCK. But this is testimony of Gov. Thomas Campbell.

Mr. CARSON. Yes, sir; Gov. Thomas E. Campbell [reading]:

TESTIMONY OF GOV. THOMAS E. CAMPBELL GIVEN BEFORE THE ARIZONA-COLORADO RIVER COMMISSION

Q. Were you present at the time of the execution of the Colorado River compact, at Santa Fe, N. Mex., on November 24, 1922—A. Yes; I was present.

Q. At that time what was your official position in the State of Arizona?—A. I was governor of the State of Arizona for the years 1919, 1920, 1921, and 1922; and was governor of the State of Arizona at the time of the conference at Santa Fe, and at the time the Colorado River compact was signed.

Q. Were you present at Bishop's Lodge, near Santa Fe, N. Mex., during the negotiations and discussions leading up to the agreement that was signed at that time respecting the waters of the Colorado River?— A. Yes; I was.

Q. Had you appointed Mr. W. S. Norviel as the representative of the State of Arizona at that conference?

A. No; I did not appoint Mr. Norviel as the representative of the State of Arizona. That was taken care of by the fact that the Enabling Act, which provided for a meeting of the representatives of the several Colorado River Basin States, designated the water commissioners of the several States as representatives at the conference. I had appointed Mr. Norviel as the water commissioner of Arizona, and during that year—1922—he was the qualified water commissioner, so that when the act was passed by the United States Congress, providing for the meeting of the representatives of the several States, he automatically became the representative from Arizona.

Q. Do you recall who were present at the time of the Colorado River conference at Santa Fe during the fall of 1922?—A. Yes; I recall many of the persons who were there. The United States was represented by Herbert Hoover, who acted as chairman. He had been previously selected at a meeting in Washington. California was represented by W. F. McClure, who has since died; Colorado was represented by Delph E. Carpenter; Nevada by J. G. Scrugham; New Mexico by Stephen B. Davis, Jr.; Utah by R. E. Caldwell; Wyoming by Frank C. Emerson, who afterward became governor of Wyoming and has since died; and Arizona was represented by W. S. Norviel. The Reclamation Service was represented by Arthur P. Davis, and several advisers. Judge Richard E. Sloan was present in a legal capacity on behalf of Arizona besides Mr. Norviel and myself. California had many representatives, from the Imperial Valley and other places.

Q. How was the conference organized?—A. Mr. Hoover acted as chairman; he had tendered the services of Clarence C. Stetson, of Maine, as secretary of the conference, and Mr. Stetson acted as secretary. The proceedings were taken down in shorthand, and I presume were transcribed, although I have never seen a copy.

Q. The Enabling Act directed that the water of the river be divided among the States. Why was this not done?—A. We found it would be impossible, because

every State at that time was claiming more water than was in the system, and early in the conference we came to the conclusion that it would not be possible to arrive at a compact which would definitely allot to each State any definite amount of water.

Q. As the conference progressed, did you come to a solution of this question of division of the water?—A. Yes; we finally concluded a compact could be arrived at by dividing the water among the States represented by groups.

Q. Then what was done?—A. It was the consensus of opinion, and agreed to, that the States be separated into two divisions, known as the upper basin and the lower basin. The upper basin was to include the States of Colorado, Utah, New Mexico, and Wyoming, and those comprising the lower basin were Arizona, California, and Nevada. It was further agreed that Lee Ferry would be a division point between the two basins and that would be the point considered for a division of the water—Lee Ferry and not at the so-called dam site. The division was to be 50-50 as to the amount of water, 7½ million acre-feet to the upper basin and 7½ million acre-feet to the lower basin. When the question of the system was presented to the Arizona delegates, composed of the State water commissioner, Judge Sloan and myself, we objected vigorously to the inclusion of the waters of the Gila River, inasmuch as that water had been placed to beneficial use and would be of no value for storage at any place in the river for the lower basin States. After 2 days of discussions, mainly informal, it was finally agreed by the other participants in the compact that there would be allowed an extra million acre-feet, which was approximately the amount run off in the Gila system, to be used by Arizona to its exhaustion.

Q. What attitude did the commissioner or the representatives from Arizona take toward the compact as written, and before the arrangement was made as to the million acre-feet—did you refuse to sign the compact because of the inclusion of the waters of the Gila

River?—A. Absolutely we did. That was the reason why section 3B was put into the compact.

Q. Was anything said about designating this million acre-feet for Arizona?—A. Yes, that was discussed, and it was concluded that we could not tag that as belonging to Arizona because the plan on which we proceeded was that the waters be divided among the basins and no particular water would be allowed to any one State. If we attempted to tag it, then every other State would demand that it get a certain amount of water.

Q. Was there any agreement between the Arizona representative and the representatives of the other lower basin States as to setting aside to Arizona the water described in paragraph 3B of the proposed compact?—A. Yes, there was a definite understanding that after the seven-State compact was ratified, so far as the three States in the lower basin were concerned, they would enter into a compact in which it would be agreed that all of the water of the Gila River would go to Arizona.

Q. Who were present at the discussions which resulted in that understanding?—A. Mr. McClure, of California; Mr. Scrugham and Mr. Squires, of Nevada; and Mr. Norviel and myself, of Arizona.

Q. Did these discussions take place before the execution of the compact on November 24, 1922?—A. That understanding was arrived at before the compact was ratified and signed.

Q. For what purpose was the water of the Gila River to go to the State of Arizona?—A. For the benefit of Arizona and for use in irrigation.

Q. At the time the discussions were had with reference to putting this paragraph 3B into the compact, did all of the delegates to the conference know that Arizona had objected to the compact without such a provision?—A. Absolutely; they all knew that was the fact; it was the lock upon which we had stuck for a couple of days, and discussions were had by all of the delegates and commissioners. I assume these discussions would appear in a transcript of the minutes; the fact was well

LEE FERRY

UPPER

SAN JUAN

COLORADO

LITTLE LOWER BASIN

SANTA FE

N E W

M E X I C O

COLO

A R I Z O N A

VERDE

SALT RIVER

SALTON SEA

COLORADO RIVER

PHOENIX

GILA

GILA RIVER

U.S.
MEXICO

UNITED STATES
MEXICO

UNITED STATES
MEXICO

GULF OF
CALIFORNIA

M E X I C O

SALTON SEA DRAINAGE BASIN
(NOT A PART OF COLORADO RIVER
DRAINAGE BASIN)

APPENDIX No. I

known and discussed by everybody present. Without that provision of 3B, by which Arizona was awarded an extra million acre-feet of water for the inclusion of the water of the Gila River, the compact would never have been signed by Arizona.

Q. Then after the arrangement was made for the inclusion of paragraph 3B in the compact, it met with the approval of Arizona, and Mr. Norviel signed the compact for Arizona?—A. He did.

Q. Why was it that this understanding for the tri-State compact between California, Nevada, and Arizona, was not carried out?—A. The new administration in the State of Arizona was opposed to any compact and never went ahead.

Q. Who was the Governor-elect of Arizona?—A. Gov. George W. P. Hunt defeated me in the November election of 1922, and with my going out of office, the continuity of the negotiations with respect to the carrying out of the compact were blocked and no progress was thereafter made.

Q. Have you ever discussed this question of the Colorado River compact and the provision of this paragraph 3B since that time?—A. No, I have never been in court, or before any official body to present my knowledge of the understanding that was arrived at at that time. I have always been anxious to tell what took place at the conference and why the compact was drawn in the way that it was.

(End of testimony.)

I also have the testimony of Mr. W. S. Norviel and of Mr. C. C. Lewis, who attended that conference, to the same effect, but I think it unnecessary at this time to encumber the record with it.

Chairman MURDOCK. May we see the picture in that little pamphlet? You had a picture there that I am interested in.

Mr. CARSON. I will be glad if you will tear the picture out of this book and put it in the record, and also the letter and the other statements by the other men also.*

* The picture of Mr. Herbert Hoover is omitted from this appendix and is used as a separate appendix.

Chairman MURDOCK. I will pass this picture along to the committee. Some of you will recognize quite a change in Mr. Herbert Hoover of 1922—this picture may have been taken before 1922—and the elder statesman of today. I think this is material evidence that goes to show just what took place.

Without objection, we will include the testimony of Mr. Norviel and Mr. Lewis.

Mr. CARSON. The testimony is in this brief, and it is to the same effect as that of Governor Campbell.

Chairman MURDOCK. It was testimony given before the same board as Governor Campbell's testimony?

Mr. CARSON. Yes.

(The matter referred to is as follows:)

TESTIMONY OF MR. W. S. NORVIEL GIVEN BEFORE THE ARIZONA-COLORADO RIVER COMMISSION

Q. State your name, residence, and profession.—A. W. S. Norviel, Phoenix, Ariz., attorney at law.

Q. How long have you been a practicing lawyer in Arizona?—A. Since 1916, except two short periods.

Q. Are you still active in the practice?—A. Yes.

Q. In 1922, what, if any, was your official position in Arizona?—A. State water commissioner.

Q. By reason of your being water commissioner, were you designated as a commissioner under the Federal enabling act respecting the division of the waters of the Colorado River?—A. Yes.

Q. Did the State water commissioners of the State of Arizona, California, Nevada, New Mexico, Wyoming, Utah, and Colorado meet pursuant to the provisions of the enabling act?—A. Yes. That is, those having charge of public waters, mostly called State engineers, met.

Q. Where did you first meet?—A. Washington.

Q. Who was elected chairman?—A. Herbert Hoover, then Secretary of Commerce.

Q. Was Mr. Hoover designated by the Federal authorities as the United States representative?—A. Yes.

Q. Who was the secretary of the conference?—A. Clarence C. Stetson was made executive secretary.

Q. How long did the meeting at Washington last?—A. Four or five days.

Q. What matters were discussed at Washington?—A. It was the first coming together of the commissioners. After the organization, the representatives were called upon to express ideas as to the proper procedure to accomplish the purpose of the congressional act and the acts of the several State legislatures. I presented a written proposed compact, and discussion then followed upon it.

Q. Did the question first come up at the Washington conference of dividing the waters, not among the States, but between two groups of States, namely, the upper basin and the lower basin?—A. At the Washington meeting we discussed the division of the waters among the several States, but it immediately was apparent that there never could be an accord as to the proper allocation to each State.

Q. Before the conference broke up at Washington in January 1922 did you accomplish anything definite with respect to an agreement on the division of the waters?—A. No. The commissioners were without sufficient information and were unwilling to be bound to anything definite, save procedure.

Q. After the Washington meeting in January 1922, when did you next meet?—A. Public hearings were held in various cities of the interested States.

Q. Did the conference convene in Santa Fe, N. Mex., in November 1922?—A. Yes.

Q. Was the meeting in Santa Fe, N. Mex., in November 1922, a continuation of the Washington meeting, with the same persons present and the same States represented?—A. Yes.

Q. Was Mr. Hoover present?—A. Yes.

Q. Did Mr. Hoover preside as chairman and did Mr. Stetson serve as secretary?—A. Yes. At all the meetings.

Q. Were the minutes of that meeting taken down stenographically?—A. Yes.

Q. Have you a copy of those minutes?—A. No.

Q. Have you ever seen a transcript of the stenographic record?—A. No.

Q. Did you at that meeting agree to divide the waters of the Colorado River between two groups of States, designated as the upper and lower basins?—A. Yes.

Q. Why was that done, rather than divide the waters among the several States, allocating to each State a definite amount?—A. It was agreed that insurmountable difficulties would block any effort to allocate to the several States a definite portion of the water. The general consensus being often expressed that nothing should be granted to a single State, no State or stream particularly or otherwise favored or hindered.

Q. In the compact that was finally signed, in paragraph (a), article II, the Colorado River system is defined, and in paragraph (b), article II, the Colorado River Basin is defined, which terms include the Gila River and its tributaries. Why was the Gila River included in the Colorado River compact?—A. The terms "Colorado River system" and "Colorado River Basin" were defined to include all the streams tributary to the Colorado River and the area draining into the Colorado River, and it was deemed advisable to make no exceptions of any particular tributary. Arizona objected vigorously to the inclusion of the Gila River, but our objections were overruled.

Q. Is it true that in November 1922 the Gila River was then in use, or had been appropriated completely?—A. Yes.

Q. Is it not a fact that the Gila River enters the Colorado River below the point where all interested parties contemplated the dam would be built?—A. Yes.

Q. At the November 1922 conference, what was the consensus of opinion as to where the first dam would be built in the River?—A. It was the general opinion that such dam would be located in Boulder Canyon.

Q. Was this point not above the point where the Gila River enters the Colorado River?—A. Yes.

Q. Could any States benefit by the fact that the Gila was included in the Colorado River system?—A. No. Its waters enter the main stream of the Colorado at a point which prevents the use of the Gila waters within the United States.

Q. Were those matters discussed at this meeting?—A. Yes. It was my contention that only Arizona could use or had a right to Gila waters.

Q. Did you point out that the definition "Colorado River system" included the Gila River system in the division of the waters?—A. I raised the question and demanded the Gila be specifically excluded.

Q. What position did you take on the inclusion of the Gila River in the compact?—A. That it be excluded entirely from the discussion. Later we compromised when the conference granted an extra million acre-feet to Arizona. This extra million acre-feet was intended for the sole use of Arizona to compensate for the inclusion of the Gila River as part of the Colorado River system. Following the predetermined plan of allocating no water to any particular State, but to groups or basins only, the provision for this extra million acre-feet was couched in language as used elsewhere in the compact; that is, it read to the lower basin, rather than to Arizona, but it was definitely understood that this additional water was for the exclusive use of Arizona.

Q. Was the draft of the compact prepared and submitted to the conference before it was finally signed up?—A. Yes.

Q. After the compact was submitted, how many days elapsed before it was actually signed?—A. Some 4 or 5 days elapsed, during which time we were attempting to dispose of this Gila River matter.

Q. At the time the draft was submitted, and you testify that it was several days before it was signed, did that draft include paragraph (b) of article III, of the Colorado River compact?—A. No. The draft merely included the Gila as part of the Colorado River system. It did not contain the provision now known as

III (b) which made provision for the allocation of the extra million acre-feet to the lower basin.

Q. Do you have the copy of the proposed contract which did not contain the provision with reference to the million acre-feet, to which you have referred?—A. Yes.

Q. Is this the original copy that you had at the meeting in Santa Fe?—A. Yes; except that there are some notes that I made in this copy at or during the meeting November 22, or in the succeeding days.

Q. I hand you a document and ask you if that is the original.—A. Yes. It is.

Q. It shows the date of November 18, 1922. Is that the date that you first received it.—A. It would indicate that it was first handed in at that time, and we then began the discussion.

Q. You refused to sign that draft of the compact?—A. Yes.

Q. Why?—A. Because it included the Gila River and made no provision for compensation to Arizona.

Q. You had that draft before you, and you declared Arizona's position before the Conference?—A. Yes.

Q. After that a new compact was prepared which did contain a provision for compensation to Arizona, known as paragraph (b) of article III?—A. Yes.

Q. That compact was consented to by you and executed on November 24, 1922?—A. Yes.

Q. Who prepared paragraph (b) of article III of the Colorado River compact as signed?—A. Judge Sloan and Stephen B. Davis, and one other whom I do not recall.

Q. What discussion was had relating to the said paragraph (b) of article III and its meaning and purpose?—A. I had steadfastly refused to agree to the original draft that merely included the Gila River and after several days of discussion and argument, during which the conference refused to exclude the Gila and I refused to accept the draft which included the Gila, a compromise was reached in the form of article III (b) which provided the extra million acre-feet to compen-

sate Arizona for the inclusion of the Gila River in the Colorado River system. It was fully understood by all that this million acre-feet was for the sole and exclusive use of Arizona, although the language used provided for its use by the lower basin. I have explained why such wording was used.

Q. Was the answer that you have given of the meaning and purpose discussed at the full meeting of all the delegates at this conference, including California and Nevada?—A. Yes. All the delegates, including California and Nevada, understood and agreed that this additional water was for Arizona's use.

Q. Will you state if you made any statement to the Colorado River Commission with reference to the definition given to the Colorado River system and the Colorado River Basin, and the meaning of paragraph (b), article III?—A. Yes. I did make a statement. I asked the conference if it was the understanding of the Commission that the million acre-feet of water set out in article III (b) was for the sole and exclusive use of Arizona and stated that if that was the understanding I would sign the compact, if it was not the understanding I would refuse to sign. The unanimous reply was that this million acre-feet was for Arizona alone. With that understanding I signed the compact for Arizona.

Q. Were these statements which you made stated to the open conference?—A. All delegates and representatives were present. We were having a final meeting preparatory to the signing of the compact.

Q. What response did delegates from the other States, including California and Nevada, make in regard to your statements?—A. They agreed in the understanding which I have just stated. Mr. McClure, of California, stated to me and to the conference that he, as the California representative at the conference agreed to the understanding that this water of article III (b) was for the exclusive use of Arizona.

Q. What response did Mr. Hoover make?—A. Mr. Hoover did not take part in the discussion, did not state his views on any part, as I remember. He urged us to

agree, and sometimes referred us to a former agreement, or purported agreement.

Q. Was there any statement made at that time contrary to the explanations that had been given as to the meaning and intent of paragraph (b) article III of the compact?—A. None whatever; there was a full accord and agreement by all delegates.

Q. At that time, what, if anything, was said in reference to a tri-State agreement between the representatives of California and Nevada and Arizona and Mr. Hoover?—A. It was several times suggested that there should be no difficulty for the three lower States to agree to a division of the waters allocated to the lower basin.

Q. Were these statements, with reference to a tri-State agreement, made prior to the time the compact was actually signed?—A. Yes, and Mr. Squires made some statements afterward. Mr. McClure, Mr. Scrugham, and Mr. Squires expressed their willingness to enter into such a compact. It seemed very feasible.

Q. Did each and every one signing the Colorado River Compact know of the discussion with reference to the supplemental tri-State compact to be executed by California, Nevada, and Arizona?—A. Yes. It had been discussed in the open conference and Mr. Hoover made several suggestions regarding such a tri-State compact.

Q. Was there ever any statement made by anyone at the conference that the waters of the Gila River were to go to anybody except the State of Arizona?—A. None whatever.

Q. Was any claim ever made at that time that any other State had any interest in the waters of the Gila River?—A. No.

Q. Was there a universal agreement by each and every one of the delegates that the Gila River belonged to the State of Arizona?—A. That was the agreement upon which I consented to sign the compact for Arizona.

would sign the final draft of the compact only on the full and complete understanding by all that the additional million acre-feet was for the use of Arizona alone. To this Mr. McClure, representing California, agreed and all others joined in and agreed to this understanding.

Q. Were these statements made to the open conference?—A. Yes.

Q. What response did delegates from the other States, including California and Nevada, make in regard to these statements?—A. They all agreed, Mr. McClure making a statement to this effect, all others agreeing, including Nevada.

Q. In addition to the waters of the Gila River, was Arizona to participate in the division of the waters in the main stream of the Colorado River?—A. Yes. Arizona was to share in the main stream waters.

Q. Were these matters discussed at the time of the conference?—A. Yes. To the extent that Arizona, Nevada, and California were to all share in the main stream waters and Arizona was to have the exclusive use of the waters of the Gila.

Q. Did you make any statement that if the Colorado River had any different meaning from what you have testified, you would not sign the compact?—A. I stated that I would absolutely refuse to sign the compact if it had any other meaning.

Q. Did the representatives of the other States and the chairman agree to your statement?—A. Yes. All, including California and Nevada, agreed.

TESTIMONY OF MR. C. C. LEWIS GIVEN BEFORE THE ARIZONA-COLORADO RIVER COMMISSION

Q. State your name, residence, and profession.—A. C. C. Lewis, Phoenix, Ariz., statistician.

Q. How long have you been in Arizona?—A. Twenty-four years.

Q. In 1922, what, if any, was your official position in Arizona?—A. Assistant State water commission. (sic)

Q. By reason of your being deputy water commissioner, did you attend the meetings held under the Federal Enabling Act, respecting the division of the waters of the Colorado River?—A. Yes; except the first meeting held at Washington, D. C.

Q. Did the conference convene in Santa Fe, N. Mex., in November 1922?—A. Yes.

Q. Was the meeting in Santa Fe, N. Mex., in November 1922 a continuation of the Washington meeting, with the same persons present and the same States represented?—A. Yes; as I recall it, the same persons were representatives.

Q. Was Mr. Hoover present?—A. Yes.

Q. Did Mr. Hoover preside as chairman and did Mr. Stassen (sic) serve as secretary?—A. Yes.

Q. Were the minutes of that meeting taken down stenographically?—A. Yes.

Q. Have you a copy of those minutes?—A. No.

Q. Have you ever seen a transcript of the stenographic record?—A. No.

Q. Did you at that meeting agree to divide the waters of the Colorado River between two groups of States, designated as the upper and lower basins?—A. Mr. Norviel, Arizona State water commissioner, did.

Q. Why was that done, rather than divide the waters among the several States, allocating to each State a definite amount?—A. Because of the impossibility of ever agreeing on an apportionment among the seven States. It was not practical. Further, there was a point provided by nature for the division line between the upper and lower basins.

Q. In the compact that was finally signed, in paragraph (a), article II, the Colorado River system is defined, and in paragraph (b), article II, the Colorado River Basin is defined, which terms include the Gila River and its tributaries. Why was the Gila River included in the Colorado River compact?—A. The Gila River was included, because it was determined that the drainage area should include all tributaries of the Colorado River in all of the seven States, and that it was inadvisable to make any exceptions. Arizona objected to the inclusion of the Gila River because of the fact the waters could be applied to beneficial use only by Arizona.

Q. Is it true that in November 1922 the Gila River was then in use, or had been appropriated completely?—A. Yes. That which was not being used had been appropriated.

Q. Is it not a fact that the Gila River enters the Colorado River below the point where all interested parties contemplated the (dam) would be built?—A. Yes.

Q. At the November 1922 conference, what was the consensus of opinion as to where the first dam would be built in the river?—A. Boulder Canyon.

Q. Was this point not above the point where the Gila River enters the Colorado River?—A. Yes.

Q. Could any States benefit by the fact that the Gila was included in the Colorado River system?—A. Not by the use of the Gila waters because the Gila enters at a point that would prevent the use of same in the United States.

Q. Were those matters discussed at this meeting?—A. Yes. It was contended that Arizona only could use the Gila waters, and it being entirely appropriated, it should be excluded.

Q. Did Mr. Norviel point out that the definition "Colorado River system" included the Gila River system in the division of the waters?—A. Yes. On this point he was firm.

Q. What position did Mr. Norviel and the Arizona delegation take on the inclusion of the Gila River in the compact?—A. That it should be excluded and did not yield until a million acre-feet additional was granted the lower basin States with a definite understanding by all that this additional million acre-feet was for Arizona's use and not to be considered in the final apportionment of the Colorado River water.

Q. Was the draft of the compact prepared and submitted to the conference before it was finally signed up?—A. Yes.

Q. After the compact was submitted, how many days elapsed before it was actually signed?—A. I do not remember, but a few days on account of Gila River matters.

Q. At the time the draft was submitted, and you testify that it was several days before it was signed, did that draft include paragraph (b) of article III, of the Colorado River compact?—A. No.

Q. Did you see the copy of the proposed contract which did not contain the provision with reference to the million acre-feet, to which you have referred?—A. Yes.

Q. This instrument which I hand you. Is this the original copy which you and Mr. Norviel had at the meeting at Santa Fe?—A. Yes.

Q. It shows the date of November 18, 1922. Is that the date that you first received it?—A. I could not say, but it seems the date thereon would so indicate.

Q. Mr. Norviel refused to sign that draft of the compact?—A. Yes.

Q. Why?—A. Because of the inclusion of the Gila River.

Q. This draft was before the Arizona delegation and Arizona's position was made known to the conference?—A. Yes. It was contended that the Gila River water was not only all appropriated, but if it were never appropriated no other State could possibly use it because of the physical situation obtaining.

Q. After that a new compact was prepared which did contain a provision for compensation to Arizona known as paragraph (b) of article III?—A. Yes.

Q. That compact was consented to by Mr. Norviel and the Arizona delegation and executed on November 24, 1922?—A. Yes.

Q. Who prepared paragraph (b) of article III of the Colorado River compact as signed?—A. Judge Sloan, Judge S. B. Davis, and Frank C. Emerson.

Q. What discussion was had relating to the said paragraph (b) of article III and its meaning and purpose?—A. Due to Mr. Norviel's firm refusal to sign the compact with the Gila River included there were several days' delay and the final result was paragraph (b) of article III, with the definite understanding that this million acre-feet belonged to Arizona in compensation for inclusion of the Gila River in the Colorado River system.

Q. Was the answer that you have given of the meaning and purpose discussed at the full meeting of all the delegates at this conference, including California and Nevada?—A. Yes.

Q. Will you state if Mr. Norviel and the Arizona delegation made any statement to the Colorado River Commission with reference to the definition given to the Colorado River system and the Colorado River Basin, and the meaning of paragraph (b), article III?—A. Yes. Mr. Norviel made it very clear that he

APPENDIX No. 3

EXCERPT FROM "HEARINGS' BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON PUBLIC LANDS, UNITED STATES SENATE, EIGHTIETH CONGRESS, FIRST SESSION, ON **S. 1175**, A BILL AUTHORIZING THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A DAM AND INCIDENTAL WORKS IN THE MAIN STREAM OF THE COLORADO RIVER AT BRIDGE CANYON, TOGETHER WITH CERTAIN APPURTENANT DAMS AND CANALS AND FOR OTHER PURPOSES, JUNE 23, 24, 25, 26, 27, 28, 30, AND JULY 1, 2, AND 3, **1947.**"

APPENDIX No. 4

EXCERPTS FROM "HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE OF PUBLIC LANDS, UNITED STATES SENATE, EIGHTIETH CONGRESS, FIRST SESSION, ON S. 1175, A BILL AUTHORIZING THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A DAM AND INCIDENTAL WORKS IN THE MAIN STREAM OF THE COLORADO RIVER AT BRIDGE CANYON TOGETHER WITH CERTAIN APPURTENANT DAMS AND CANALS AND FOR OTHER PURPOSES, JUNE 23, 24, 25, 26, 27, 28, 30, AND JULY 1, 2, AND 3, 1947."

STATEMENT OF RALPH I. MEEKER, IRRIGATION ENGINEER

Senator MCFARLAND. Mr. Meeker, will you come forward?

Senator MILLIKIN. Mr. Meeker, will you state your full name, your residence, and your business.

Mr. MEEKER. My name is Ralph I. Meeker, irrigation engineer, Phoenix, Ariz.

Employment by the State of Arizona on cooperative investigations with the United States Bureau of Reclamation water resources of Arizona, Phoenix office, 1945 to 1947.

Senator MCFARLAND. Mr. Meeker, would you mind stating your qualifications? I mean as an engineer, in particular your experience as an engineer. I believe you have that in your statement, though.

Mr. MEEKER. Yes. That follows immediately.

Prior to the Arizona work, was located in Denver, 1903 to 1945. Specialty, interstate river problems. Scope of work, engineering investigations of the Laramie, Rio Grande, La Plata, Colorado, North Platte, and Arkansas Rivers. Employed by the State of Colorado

on interstate river compacts, 1919 to 1929. In private practice as consulting engineer in Denver, 1930 to 1942. Served as chairman of the irrigation division of the American Society of Civil Engineers in 1926.

Colorado River compact: During the negotiations of the Colorado River compact at Santa Fe in November 1922, was engineering adviser for the State of Colorado; participated in the compact sessions and familiar with the background of the compact. At the request of Chairman Hoover, I assisted Mr. A. P. Davis—that was Arthur P. Davis, the director of the Reclamation Service and adviser to the Federal representative—in "reconstructing" the Colorado River flow at Lee Ferry to natural or virgin run-off conditions. It was necessary to know the total water fund to be divided.

Senator DOWNEY. Mr. Chairman, could I secure one bit of information from Mr. Meeker?

Senator MILLIKIN. Yes.

Senator DOWNEY. At that time that these figures were issued, was it expected that there would be 22,000,000 acre-feet of water available in the Colorado River?

Mr. MEEKER. No. About 20,000,000.

Senator DOWNEY. And that figure has presently been reduced to about 17,000,000?

Mr. MEEKER. Yes; nearer 18,000,000; 17,700,000.

"Consumptive use" is an engineering term, first used in the Laramie River interstate suit, 1912-14, to deplete and "reconstruct" river flows. I served as engineer to Wyoming in the Laramie River controversy. During 1918-19 I acted as engineer for Wyoming in a cooperative investigation and report with the Bureau of Reclamation on the North Platte River, where extensive use was made of "consumptive use" to deplete and "reconstruct" the flows of the North Platte River in Colorado, Wyoming, and Nebraska. The "consumptive use" values for irrigated land were based on "valley consumptive use" (inflow minus outflow) of the Little Laramie and the Cache La Pondre (sic) Rivers in Wyoming and Colorado, respectively; also other engineering data.

During the negotiations of the Colorado River compact, the above engineering terms were used and applied to Colorado River water. The river flow at Lee Ferry was "reconstructed" to virgin conditions and depleted to 1920 conditions of irrigation development in the upper basin.

Senator MILLIKIN. Just a moment. Give me a little more enlightenment on that phrase "valley consumptive use."

Mr. MEEKER. Well, we have "farm consumptive use," "project consumptive use," and "valley consumptive use." The method whereby "consumptive use" was determined, "valley consumptive use," taking the valley, the inflow up at the canyon where the river emerges from the mountain and the outflow discharging into the river, and the difference between the two representing the consumptive use.

Senator MILLIKIN. The valley consumptive use does not contemplate the separate evaluation of all the contributing streams?

Mr. MEEKER. Those occur automatically.

Senator MILLIKIN. Those occur automatically.

Mr. MEEKER. Any tributaries that come in below.

Senator MILLIKIN. In other words, you look to the end result in the main stream.

Mr. MEEKER. Yes. There are practically no tributaries in here, they are very minor.

Senator MILLIKIN. But, if there were tributaries in a stream basin or stream valley, in the use of the term which you have mentioned you would look to the net result on the main stream. Is that the point?

Mr. MEEKER. Yes. But they would be accounted for. There would be an allowance for those tributaries if there were such.

Senator MILLIKIN. Yes.

Proceed.

Mr. MEEKER. The Compact Commission had in mind a depletion by the upper basin of 7,500,000 acre-feet,

and a depletion of 8,500,000 acre-feet by the lower basin of the flow of the Colorado River.

I took to the Colorado River compact meeting 10 years of knowledge on "consumptive use" values and experience on river depletion by irrigated lands.

Delivery of upper basin water to lower basin:

Under the terms of the compact, the point of delivery for upper basin water is set at Lee Ferry, 1 mile below the mouth of the Paria River (art. II (e)). Lee Ferry is therefore the point on the Colorado River where the aggregate beneficial consumptive use or depletion by irrigation uses of the upper basin is applied to river flow.

In a similar manner the depletion of the lower basin is properly measured at the United States-Mexican boundary, where delivery is made to the Republic of Mexico. Likewise, the depletion of the Gila River is properly measured at its mouth where its contribution reaches the Colorado River.

By the above procedure, the natural channel losses along the main stream of the Colorado and along the Gila are eliminated from river flow arriving at the usable water fund of the lower basin. Such channel losses — large in volume — were common to the two designated river channels prior to man-made depletion by irrigation uses.

Lower basin apportionment of 1,000,000 acre-feet per annum: Under the terms of the compact, 1,000,000 acre-feet of additional water (from the lower basin run-off) is apportioned to the lower basin, designated III (b) water. Of my own knowledge this apportionment was made as the result of demands by Arizona for water to cover irrigation consumption in the Gila River Basin, estimated as rapidly approaching 1,000,000 acre-feet per annum in 1922. This allotment for Arizona was well understood by those present during the compact negotiations. In support thereof, the following citations are offered.

I am now reading from the report and supplemental report of Delph E. Carpenter, commissioner for Colo-

rado in Colorado River matters to the Governor of Colorado, page 4:

By reason of development upon the Gila River and the probable rapid future development incident to the necessary construction of flood works on the lower river, the lower basin is permitted to increase its development to the extent of an additional 1,000,000 acre-feet annual beneficial consumptive use before being authorized to call for a further apportionment of any of the surplus waters of the river.

I shall now read from the report of Frank C. Emerson, commissioner for the State of Wyoming in re Colorado River compact, to William B. Ross, Governor of Wyoming, January 18, 1923, page 15.

The lower basin is allowed to increase its use of water 1,000,000 acre-feet per annum in addition to the 7,500,000 acre-feet apportioned for its use by reason of possible developments upon the Gila River, and the probable rapid development generally upon the lower river. This additional development is at the peril of the lower division as no provision is made for delivery of water at Lee Ferry for this additional amount.

Senator MILLIKIN. Now, the words "and the probable development generally upon the river," does that refer to the Colorado River or the Gila River?

Mr. MEEKER. The Colorado River, the lower basin.

I am going to read from a citation from the Colorado River compact by Reuel Leslie Olson, September 1926, (see footnote 73, p. 39). Now, I have that here in the building but I do not have it with me, so I will read from the text:

Mr. Bannister erroneously asserts that this paragraph was inserted because the Commissioner from Arizona "was so persistently obstinate."

You may wonder why the three Southern States have received in this compact a million more acre-feet of water than has been received by the Northern States. I have wondered about it myself but the explanation is that the Commissioner of Arizona was so persistently

obstinate, and, in the opinion of the upper States, so unreasonably obstinate, that he would not sign the compact unless he obtained an extra pound of flesh. Hence, the bonus of 1,000,000 acre-feet to the three States of the south.

I might say that L. Ward Bannister was a special representative for Colorado at compact negotiations.

The 1,000,000 acre-feet apportionment is reflected in the Boulder Canyon Project Act of December 21, 1928 (sec. 4), where the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, undiminished (except for return flow) by any treaty that may hereafter be made with Mexico.

Senator MILLIKIN. Any questions?

Senator MCFARLAND. Mr. Meeker, was there quite a bit of discussion about this 1,000,000 acre-feet at the compact negotiations?

Mr. MEEKER. Yes. The draft compact was made without that originally and then later, after objection by Mr. Norviel, the Arizona Commissioner, it was inserted.

His position first was that the Gila River should be omitted from the compact, but that was denied on the grounds that it was a part of the Colorado River system. And then, after he felt that he couldn't get it cut out, he demanded a million acre-feet for the Gila.

Senator MCFARLAND. Well, during this discussion was the discussion to the effect that this water was to be allotted to Arizona? Was that the effect of the discussion?

Mr. MEEKER. Absolutely; to cover the water that was then being consumed in the Gila River Basin.

Senator MCFARLAND. Was that understood by all of those present?

Mr. MEEKER. Yes, sir.

Senator MCFARLAND. Now, in your discussions what water were you talking about? Was it the surface water which reached the streams?

Mr. MEEKER. Surface water only.

Senator MCFARLAND. Surface water only.

I believe that is all, Mr. Chairman.

Senator DOWNEY. I have a few questions, Mr. Chairman.

Mr. Meeker, you read in this statement the paragraph about which the chairman inquired:

> By reason of the development upon the Gila River and the probable rapid future development incident to the necessary construction of flood works on the lower river, the lower basin is permitted to increase its development to the extent of an additional 1,000,000 acre-feet annual beneficial consumptive use before being authorized to call for a further apportionment of any surplus waters of the river.

That is a quotation from Mr. Carpenter?

Mr. MEEKER. That is correct.

Senator DOWNEY. Did you read this short paragraph that appears in his report before that paragraph, follows:

> 7,500,000 acre-feet, exclusive annual beneficial consumptive use in perpetuity to the upper basin and a like amount to the lower basin.

Mr. MEEKER. I know there is much more material that I didn't read. I only read that which is pertinent to the Gila River.

Senator DOWNEY. This last paragraph is in the Carpenter report antedating the part you read?

Mr. MEEKER. Certainly.

Senator DOWNEY. Do I understand that in these two paragraphs you interpret "annual beneficial consumptive use" as not to mean the amount of beneficial use that the landowners actually have in acre-feet but the amount they deplete the river?

Mr. MEEKER. Yes. It is the aggregate beneficial consumptive use or water that is "burned up," as Mr. Carpenter used to use the term, at the point on the river where the delivery is to be made. And in that sense "consumptive use" is stream depletion. You have to determine your consumptive use and apply it to the irrigated areas in the upper basin and arrive at the total and apply that as depletion.

Senator DOWNEY. Well, as I understand you, you say it is measured at the point where the water is taken from and then when it returns to the stream.

Mr. MEEKER. No. In this sense, the consumptive use values have been derived that way but the consumptive use so derived are then applied to the irrigated lands in the basin and from that the depletion fund built up and then applied at the point of delivery.

Senator DOWNEY. Again, Mr. Meeker, I am somewhat at a loss. I have known you for a number of years by reputation. I originally came from Wyoming.

Mr. MEEKER. So I understand.

Senator DOWNEY. I still don't clearly understand you. You gave your method of determining consumptive use in a prior answer to me which, as I understand it, I agree with. But, apparently, you would not apply that measure to diversions and returns on the Gila River.

Mr. MEEKER. No; for the reason that you have got a million acre-feet of lost water that never reached the river.

Senator DOWNEY. Then, you don't apply that definition of consumptive use that you gave me to the Gila water.

Mr. MEEKER. Oh, yes, absolutely. No preferential treatment for any stream. They are all on the same basis.

Senator DOWNEY. Well, Mr. Meeker, you said you would measure the water at the point of diversion and then take the amount where the water returned to the stream and deducting one from the other you would have the beneficial consumptive use.

Mr. MEEKER. Yes. That is the engineering procedure for determining consumptive use in various areas, say 1 acre-foot per annum or 3 acre-feet per annum, or whatever it may be.

Then, having determined that—maybe not from the area in question, maybe some nearby area, some adjacent area, then the consumptive use values are applied to the irrigated land so much water per acre-foot.

Senator DOWNEY. Do you agree with the definition of "consumptive use" as used in the treaty with Mexico?

Mr. MEEKER. Why, yes. There is no discrepancy there. There is a good deal of confusion that has gone out on this because perhaps everybody does not understand the engineering procedure in arriving at these results.

Senator DOWNEY. Let me read the definition of "consumptive use."

Mr. MEEKER. I know what it is.

Senator DOWNEY. May I read it, please?

"Consumptive use" means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream.

Do you accept that definition given in the treaty with Mexico as applicable to the lands in the Colorado River Basin in the United States?

Mr MEEKER. Certainly, when you are applying that to the river flow by irrigation uses.

Senator DOWNEY. This definition isn't applied to the main stream of the Colorado River, is it?

Mr. MEEKER. Why, the definition is applied to all over the basin.

Senator DOWNEY. Are you familiar with Mr. Tipton's explanation of the expression "consumptive use"?

Mr. MEEKER. I have read it.

Senator DOWNEY. Do you agree with that? [Reading]:

The extraordinary drought provisions of this treaty will be invoked, as I say, when these areas up in here begin to suffer deficiencies. We indicated to the Mexican negotiators that the entire basin must be considered—

I emphasize "the entire basin must be considered"—

and we put the words "consumptive use" in because it would be more practical to use it as a measure than the thousands of diversions. It is very practical to use as a measure the consumptive use, because many gaging stations are installed throughout the irrigated areas, and many more will be installed, for the purpose of determining for compact administration what the various States are consuming.

And later Mr. Tipton says it is consumptive uses, the plural—

Because we have a consumptive use on this little tributary, a consumptive use on this tributary, a consumptive use on this stream, and so forth. So we have a series of consumptive uses, and that is what we are talking about in the treaty. The amount of these consumptive uses is readily acertainable (sic) by measuring the inflow to the areas and the outflow from the areas; and when those begin to reduce, this provision can be invoked, and that is long before there can be any material depletion of storage in these various main-stream reservoirs.

Do you agree with that statement, Mr. Meeker?

Mr. MEEKER. I concur with that, absolutely.

Senator DOWNEY. That is all I have to ask.

Mr. MEEKER. Just a moment.

Senator DOWNEY. First, you would apply that same language and that same rule set up by Mr. Tipton in his explanation of the definition of "consumptive use" in the treaty to the lands in the United States?

Mr. MEEKER. Yes. And that is the reason Mr. Carpenter had selected Lee Ferry, where all the depletions would accumulate and could be measured at the point of delivery.

But I think the point that you haven't clearly in mind is that it isn't practical to measure every tributary and find out the consumptive use on every one, or every small tract of land. Therefore, the engineers have evolved the procedure of determining the consumptive use for selected areas, for thereon the inflow and outflow can be measured and a valid result secured. And that's for different climates, that is, for meadowlands—the meadowlands of Wyoming, for instance.

In the meadowlands the consumptive use is around nine-tenths to 1 acre-foot per acre per annum. That is in high altitudes where you have a short growing season and low temperatures.

You come down into the western part of Colorado, and your consumptive use may be around 1½ or 1.6 acre-feet.

You come down here into—or, rather, come down into Arizona; your consumptive use is over 3, and when you get down to Imperial Valley, it is almost 4 acre-feet per acre per annum.

So, applying your consumptive-use values to the irrigated lands, all the irrigated lands being used, different variations in acres with the different climatic conditions, you arrive at a total fund of depletion, which is then applied at the point of delivery on the river.

Senator DOWNEY. Mr. Meeker, you use the expression "consumptive use" as being applicable to the amount of water delivered at Lees Ferry by the upper basin for the benefit of the lower basin. That is the 75,000,000 acre-feet delivered over a 10-year consecutive period?

Mr. MEEKER. That is right. That is the water burned up, instead of using the headgate diversion and then finding out what the return—

Senator DOWNEY. Mr. Meeker, haven't we an entirely different measure there? Doesn't the compact recognize it in this language—the obligation of the upper basin is to deliver physically in the river at Lees Ferry, not any amount of consumptive use or depletion or anything else, but 75,000,000 acre-feet of water physically in the river?

Mr. MEEKER. Yes. But that is beneficial consumptive use. You have the beneficial consumptive use of 7½ million acre-feet.

Senator DOWNEY. Oh, I am not talking about that, Mr. Meeker. The compact calls for the delivery of 75,000,000 acre-feet of water physically in the river?

Mr. MEEKER. Oh, yes. Certainly.

Senator DOWNEY. That has nothing to do with consumptive use.

Mr. MEEKER. Well, pardon me; I think I was in error there in that particular statement.

Senator DOWNEY. Well, Mr. Meeker, that was your principal reason for your interpretation. You said that Lees Ferry had been set aside because it was in the main stream to measure this 75,000,000 acre-feet in terms of consumptive use.

Mr. MEEKER. That is where the depletion of the upper basin is measured, your one-half acre-feet depletion of the upper basin.

Senator DOWNEY. Well, so far as the obligation of the upper basin is concerned, there isn't any question of depletion or of consumptive use involved. Theirs is the obligation to deliver physically in the river at Lees Ferry a physical volume of 75,000,000 acre-feet.

Mr. MEEKER. Oh, yes. I assented to that. I was wrong.

Senator DOWNEY. All right. That is all.

Senator MILLIKIN. Mr. Meeker, let us consider an abstract problem. Let us pass the rights of States to water of the main stream. Let us pass basic questions. Let us assume that the sole engineering problem were to determine the consumptive use occurring on a main stream—any main stream.

Am I correct in this—that under your theory of the proper use of the words "consumptive use" you would measure the virgin outflow of that stream at its mouth, and you would put that against the actual outflow, and the difference would represent the consumptive use on that main stream? Is that correct?

Mr. MEEKER. Well, that is, in substance, what it amounts to. Yes.

Senator MILLIKIN. With that problem.

Now, if the problem were to measure the consumptive use of a tributary to that main stream, would not the procedure be exactly the same as to that tributary?

Mr. MEEKER. Yes; and at the point of delivery to the parent stream.

Senator MILLIKIN. Now, then, if you take that main stream and chop it up into upper and lower-basin obligations in terms of consumptive use, is it your theory that you apply exactly the same formula under that particular problem?

Mr. MEEKER. Yes, sir.

Senator MILLIKIN. And if the problem cut itself down further into figuring out the allocations to States of consumptive use, you would allocate the results achieved in that way to the States according to whatever contract obligations might be. Is that correct?

Mr. MEEKER. Yes, sir; the same procedure.

Senator MILLIKIN. Thank you.

Senator MCFARLAND. As I understand it, then, Mr. Meeker, what would be charged, for instance, on the Green River in Wyoming, would be what Wyoming depletes the Green River at the point it empties into the Colorado River?

Mr. MEEKER. Yes; if you are now speaking of the beneficial consumptive use of the upper basin at Lee Ferry.

Senator MCFARLAND. Yes. Would that be true with the tributaries in New Mexico, the Gunnison in Colorado, and the San Juan in New Mexico?

Mr. MEEKER. That is correct.

Senator MCFARLAND. And, of course, that same rule would apply in the lower basin?

Mr. MEEKER. Yes, sir.

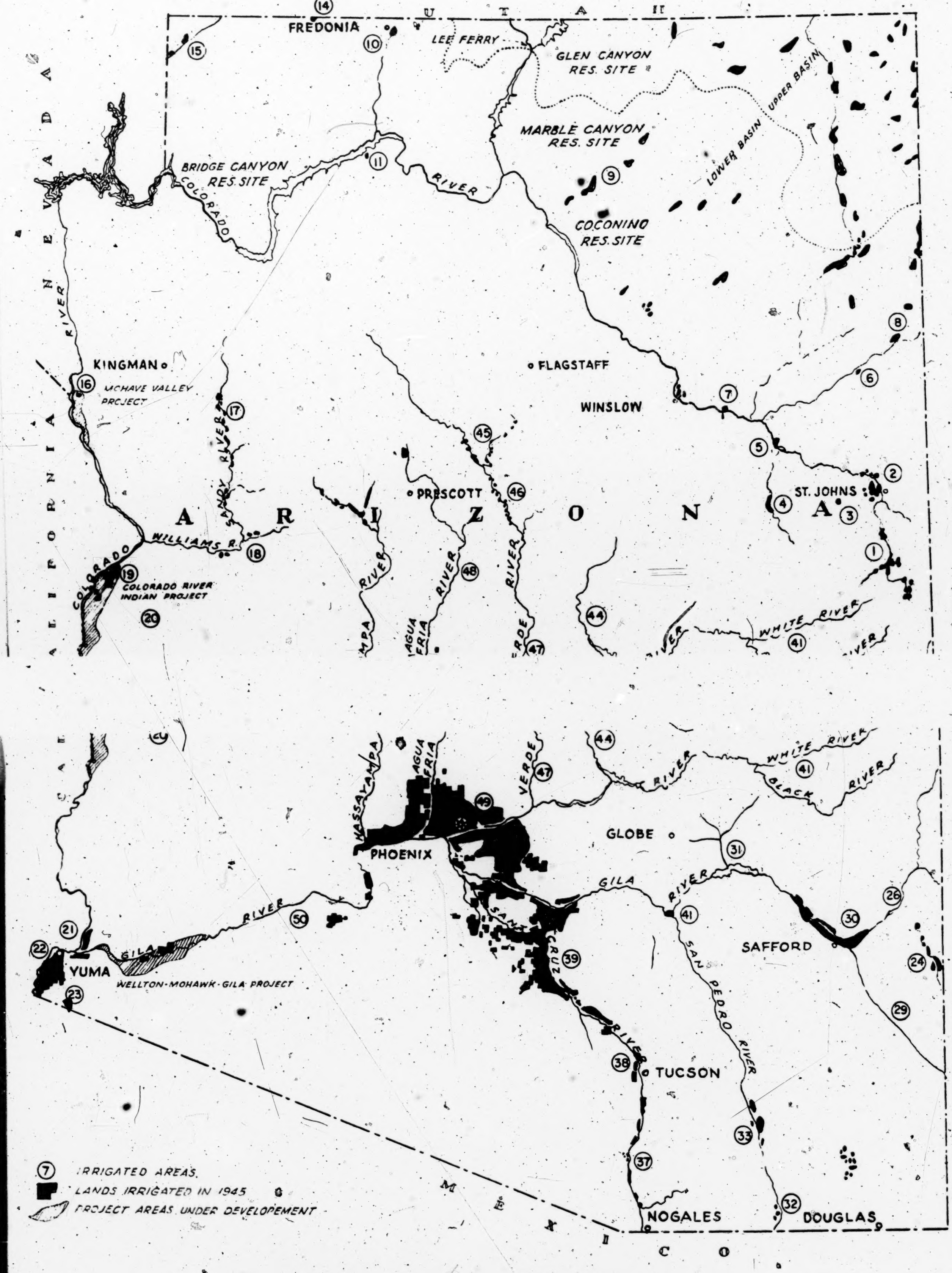
Senator MCFARLAND. That is all.

Senator DOWNEY. That is all.

Senator MILLIKIN. Thank you very much, Mr. Meeker.

Explanatory legend with map immediately following.

1. Springerville
2. St. Johns
3. Concho & Hay Hollow
4. Silver Creek
5. Woodruff
6. Black Creek
7. Holbrook
8. Hopi, Ganado & Leupp
9. Moenkopi
10. Kanab Creek
11. Havasu Creek
12. Hualpai & Meriwitica
13. Grand Wash
14. Short Creek
15. Littlefield
16. Davis Dam to Topock, including Mohave Indian Lands
17. Big Sandy River
18. Santa Maria River
19. Colorado River Indian Reservation
20. Bouse Valley & Vicinity
21. North & South Gila Valleys
22. Yuma Valley
23. Yuma Mesa
24. Duncan Valley
25. Alpine
26. San Francisco River
27. Eagle Creek
28. Portal
29. San Simon Creek
30. Safford Valley
31. San Carlos Indian Reservation
32. Hereford Valley
33. Middle San Pedro River
34. Lower San Pedro River
35. Coolidge Dam to Kelvin
36. San Rafael Ranch
37. Santa Cruz County
38. Pima County
39. Pinal County
40. Black River
41. Fort Apache Indian Reservation
42. Cherry Creek
43. Salt River Canyon to Roosevelt
44. Tonto Creek
45. Verde River upstream from Camp Verde
46. Middle Verde River
47. Ft. McDowell Indian Reservation
48. Upper Agua Fria River
49. Maricopa County upstream from Gillespie Dam
50. Gillespie Dam to Dome



IRRIGATED LAND IN ARIZONA

APPENDIX No.5

APPENDIX No. 6

EXCERPTS FROM TESTIMONY OF THE HONORABLE CARL HAYDEN, UNITED STATES SENATOR FROM ARIZONA, AS APPEARING IN "HEARINGS BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, UNITED STATES SENATE, EIGHTY-FIRST CONGRESS, FIRST SESSION, ON **S. 75**, A BILL AUTHORIZING THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A DAM AND INCIDENTAL WORKS IN THE MAIN STREAM OF THE COLORADO RIVER AT BRIDGE CANYON, TOGETHER WITH CERTAIN APPURTENANT DAMS AND CANALS, AND OTHER PURPOSES, AND **S. J. RES. 4**, A JOINT RESOLUTION GRANTING THE CONSENT OF CONGRESS TO JOINDER OF THE UNITED STATES IN SUIT IN THE U.S. SUPREME COURT FOR ADJUDICATION OF CLAIMS TO WATERS OF THE COLORADO RIVER SYSTEM, MARCH 21, 22, 23, 24, 26, 28, 29, 30, AND 31, APRIL 2, 9, 11, 12, 13, 14, 26, 27, 28, AND 30, AND MAY 2, 1949."

Senator HAYDEN. My contention is, and I think it is as clear as a bell from the record, that Arizona is entitled to 2,800,000 acre-feet of water out of the main stream of the Colorado River, out of the 7,500,000 acre-feet apportioned to the lower basin. I know how those figures came about. I was here in Congress at the time.

What happened historically was that the Colorado River, combined with floods from the Gila, broke over into the Imperial Valley and drowned out a lot of valuable agricultural land. All of the river ran into the Salton Sea for a while. To adequately protect people of the Imperial Valley it was necessary to go up

somewhere along the river and build a great dam to control the floods, and the Boulder Canyon site was selected.

To build the Boulder Canyon Dam required an authorizing act by Congress. The states of the upper basin looking the situation over, said, "Before any dam is built on the Colorado River we must have an understanding about how the waters of that river are going to be divided. We want to know what water will be left for us, because California is lower down, has lands that are level and more susceptible of irrigation, and if nothing is done about dividing the water, they will put it to beneficial use; and once land is irrigated in California we never could take the water away from them. Whatever the future situation may be, it will not be possible to turn existing irrigated farms back into the desert."

It was the upper basin States which insisted that there should be a Colorado River compact. It was at their request that Congress, in the act of August 19, 1921, authorized the making of a compact among the basin States for the apportionment of the water of the Colorado River. The act was conditioned upon the appointment of, and participation in the compact sessions by, a representative of the Federal Government. Herbert Hoover, who was then Secretary of Commerce, was persuaded to be the Federal representative because everyone wanted an engineer of standing and national reputation to be at the head of the Commission.

The commissioners from the seven States negotiated all summer and did not get anywhere. I remember talking to Mr. Hoover one day about it, and he said they just could not agree on anything at all. I said, "What you say is due to your political inexperience; there is an election coming on this fall, and it does not make any difference what a State official should now agree, because his opponent is going to say that he has traded away the heritage of his people. But if you will just wait until after the election and then get the State commissioners together, they will write a compact." And that is exactly what they did.

They went over to Santa Fe and agreed upon the Colorado River compact, which was signed November 24, 1922. It was found impossible at that time to make a division of the water among the seven States; so they agreed to divide the Colorado River Basin into two parts, and that 7,500,000 acre-feet should be allocated to the upper basin and 7,500,000 feet to the lower basin out of the main stream at Lee's Ferry near the Utah-Arizona boundary line.

Then again, having had difficulty with California in getting that State to come together with them on the compact, the representatives of the upper basin States decided that they had better have a further assurance before Congress authorized the construction of the Boulder Canyon project. "We insist that the California Legislature shall meet and irrevocably bind that State for the benefit of the United States and all the other States of the basin; that California will never claim more than 4,400,000 acre-feet out of that 7,500,000 coming down the Colorado River." The Boulder Canyon Project Act accordingly was passed by Congress with the specific provision that it would not be effective until the California Legislature made that irrevocable agreement.

Subtract 4,400,000 acre-feet from 7,500,000 acre-feet, and what is left could go only to two other States, Arizona and Nevada.

The 4,400,000 acre-feet apportionment to California as worked out was in close accord, but not quite identical, with an arbitration award that Arizona accepted at one time in order to get a settlement with California. Arizona submitted to the Governors of the upper basin States and their representatives this question: How should the lower basin water be divided?

The governors came back with a finding that Arizona should get 3,000,000 acre-feet, California 4,200,000, and Nevada 300,000. When the time came to write the Boulder Canyon Project Act, California took another 200,000 acre-feet. That is how it gets up to 4,400,000. I remember the argument made to us during consideration of that act: "Arizona has been allocated under

the governors' arbitration 3,000,000 acre-feet; your State is losing less than 10 percent of that amount of water and you had better go along," and that is the way it was done.

Unfortunately, the State of Arizona failed promptly to ratify the Colorado River compact. We then had a group of folks in Arizona who were perfect fanatics about Colorado River water. They would look at a map of the State, see a level place on it somewhere, figure up the number of irrigable acres, and insist that there were millions of acres of desert land in Arizona that could be irrigated. We had one gentleman, Mr. George H. Maxwell, who even argued that, based upon the doctrine of riparian rights, the State of Arizona had the right to have the Colorado River come down its northern border with an undiminished flow.

Approval of the Colorado River compact got mixed up into politics because the defeated Governor of Arizona went over to Santa Fe when the compact was signed, and came back saying that it was a wonderful document. The Governor who had defeated him a few weeks before in the State election, of course, did not like that. So when it came to the ratification of the compact much trouble developed in the Arizona Legislature.

In an effort to straighten out that situation, I addressed a long series of questions to Mr. Hoover as to what the compact meant. All of the questions were asked in order to satisfy people in Arizona who were alleging that somehow or other our State was going to suffer great injury if we ratified the Colorado River compact. The questions were not based upon any fear that California would not do the right thing, or that the other States in the basin would not do right by us, but just simply to satisfy local sentiment at home.

But we did not succeed in that effort, and my recollection is that the Colorado River compact failed of ratification in one house of the Arizona Legislature by about two votes and by one vote in the other. So Arizona was not in the compact when the time came for Congress to pass the Boulder Canyon Project Act. And

because Arizona had not approved it, the other six States said, "We are going to fix it so that Arizona cannot get any water out of the Boulder Canyon Reservoir until Arizona joins the compact." If Senators will read through the Boulder Canyon Project Act they will find one place after another where it is in effect provided that unless a State had approved the compact it did not get any water out of the Colorado River.

The bill to authorize the construction of the Boulder Canyon project was reported in the Senate in the spring of 1928. Senator Ashurst and I were there to represent our State. Here was a bill which absolutely deprived Arizona of any benefits whatsoever from the construction of that project. We concluded that our only recourse was to fight the bill. So we tied it up for over a month, toward the close of the summer session of Congress, which was not difficult because the appropriation bills and other business frequently caused it to be set aside. The bill finally was made the exclusive unfinished business of the Senate, when Congress reconvened on the first Monday in December 1928. Then we started talking again. There were just the two of us—

Senator KERR. Not a filibuster, Senator.

Senator HAYDEN. We did filibuster; there was no fooling about it at all. [Laughter].

We did it all day long and then when the Senate ran into night sessions we kept on—insisting that there must be some indication in the bill that Arizona had some right to water in the Colorado River.

Finally—I very well remember the last night; I talked until about 11 o'clock when a quorum did not develop; so I went to sleep on a couch. The last of the Senators to make a quorum straggled in just as the sun was coming up. I told all the Senators to go home, get a bath, get breakfast, and take their time, because I was not going to yield the floor until at least half past 10. I knew there were then in progress negotiations to work out something in the bill that would help Arizona.

Senator Pittman of Nevada was the principal negotiator who was trying to get our trouble straightened

out. He thoroughly understood our attitude with regard to the legislation.

He had told me the evening before, and then again that morning—I remember I yielded the floor to my colleague and talked to Senator Pittman in the Democratic cloakroom. He said, "We have fixed up an amendment which clearly indicates what water in the Colorado River Arizona is entitled to." That is the provision in the Boulder Canyon Project Act by which Congress authorized in advance the approval of a supplemental compact between the three States of the lower basin for a division of Colorado River water. It gave advance congressional approval. Ordinarily an interstate compact is approved after the States have negotiated it, but this was another way of getting at it.

It is provided in the Boulder Canyon Project Act that:

> The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico. * * *

One of the allegations made by some of the fanatics in Arizona was that if Arizona should ratify the Colorado River compact and a shortage of water occurred in Mexico, we would have to open up the Roosevelt

Dam and all the other Arizona reservoirs, turn the water down the Gila River, and let it run to Mexico; that we would have to open up the floodgate and turn the water down, even though it would never get to Mexico, but would be soaked up in the sands.

But that is what some people in Arizona construed the compact to mean. Those words last quoted were used in the act, not for fear of California or the other basin States, but to answer the fears of the fanatics in Arizona. That is also why the following language is in the Boulder Canyon Project Act:

If it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water which cannot reasonably be applied to domestic and agricultural uses, and that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact. * * *

Senator Pittman brought us this solution. I remember very well that Senator Kendrick came to talk to me in the cloakroom and said, "Now, this is what you have been talking about: You want a clear definition of Arizona's rights to water out of the Colorado River. We have given it to you and you ought to abandon this filibuster." We could have kept it up. We were not afraid of cloture. That had been tried once before and failed to get the necessary votes. We could have tied the bill up for good. And I can assure you that I would have been right there talking yet if we had not made this agreement.

Senator McFARLAND. Senator, pardon me just a minute. Did you read the earlier portion of that section of the Project Act which provided for the appor-

tionment of 2,800,000 acre-feet of III (a) water to Arizona, plus the waters of the Gila?

Senator KERR. Yes; he read that.

Senator MCFARLAND. Pardon me; I did not hear that.

Senator HAYDEN. There is another provision in the act about an additional million acre-feet allocated to the lower basin.

Senator KERR. That is III (b).

Senator HAYDEN. III (b). Everybody knew that was Arizona water. The California Senators knew it better than anybody else because if you will look at that map the Gila River runs into the Colorado River below any point where California could divert it into that State. It could not be used by any other State. The old Laguna Dam and the present Imperial Dam are above the mouth of the Gila River. So everybody agreed that no other State could have any claim to any water that could be physically used in one State alone. That was the Gila River situation.

But we had to put all that language in the act in order to satisfy a lot of our people that Arizona would not be required to deliver any Gila River water to Mexico and that no one else had any claim to it. That is why it was written.

The language was not adopted, as I say, because any representation had been made at any time by any Senator from any State that Gila River water did not belong to Arizona.

That was thoroughly understood by Senator Johnson and Senator Shortridge, the then Senators from California.

If the representations made with respect to the Gila River in later years, on behalf of the State of California, had been so much as whispered at that time, the Boulder Canyon Project Act would never have been passed. I know that positively, because these later representations are so different from the concept that was in the minds of all the Senators who had to do with the

passage of that act, that such later representations just would not fit the true original situation.

Since that time the intent of that act has been twisted and squirmed and distorted. Sometimes I think the way some people in California, and particularly the groups over in the Imperial Valley, try to twist the meaning of words and to distort the record of history, and to welch on the solemn agreements that the State of California made—the best group I can compare them with is the Politburo in Moscow. That is about as close a comparison as I can summon as to anyone acting to twist and distort the meaning of words and the distinct understanding that we had at the time.

Senator DOWNEY. Mr. Chairman, in view of that very bitter statement that I think is totally uncalled for and that I very much resent, on which specific act does the Senator base that statement? What specific act?

Senator HAYDEN. The assertion, for example, that the State of California could count in the waters of the Gila River as a part of the lower basin waters to which they might lay claim. That is perfectly idiotic. There is not a thing like it in the record. It never was in the mind of Senator Hiram Johnson. It never was in the mind of Sam Shortridge. It never was in the mind of any Senator that any such cockeyed idea could ever be advanced, and yet it has since been seriously advanced by California over and over again.

Senator DOWNEY. Mr. Chairman, I want to say we will certainly endeavor to present very persuasive evidence that the statement just made by the Senator from Arizona is not correct.

Senator HAYDEN. All I can say to the Senator is that no such idea had been advanced at that time by any Senator or Congressman from California, nor were any of these extravagant claims that are now being made, whether based upon a subsequent contract with the Secretary of the Interior for nearly a million additional acre-feet of water out of the surplus or otherwise. That idea was not dreamed of at the time of adoption of the Boulder Canyon Project Act. Nobody even thought it or ever mentioned that California could firm up a con-

tract above the 4,400,000 acre-feet of water by taking water away from Arizona. If that proposal had ever been before the Congress there would not have been a Boulder Canyon Project Act and you could not have gotten a Senator from any State to support it.

Senator Johnson and Senator Shortridge never advocated anything of the kind. I know what I am talking about because I was there.

That is the situation the way I see it, and that is why I have recited this history to the committee.

APPENDIX No. 7

Session Laws of Arizona, 1933 Chapter 33, Sec. 75-1601, 2 & 3 Arizona Code Annotated 1939.

COLORADO RIVER COMPACT

75-1601. TRI-STATE COMPACT.—The State of Arizona, desiring to enter into a compact with the States of California and Nevada under the authority of and in accordance with the provisions of the act of Congress of the United States of America approved December 21, 1928 (45 Stat. 1057 "Boulder Canyon Project Act"), proposes the following compact or agreement between the States of Arizona, California and Nevada:

COMPACT BETWEEN THE STATES OF ARIZONA, CALIFORNIA AND NEVADA

The states of Arizona, California and Nevada, desiring to enter into a compact or agreement under the Act of Congress of the United States of America approved December 21, 1928 (45 Statutes at Large, page 1057, "Boulder Canyon Project Act"), have agreed upon the following articles:

ARTICLE I

The major purposes of this Compact are to provide for the equitable division and apportionment of the use of waters of the Colorado River System apportioned to the Lower Basin under the Colorado River Compact; to establish the relative importance of different beneficial uses of such water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Lower Basin, the storage of its waters, and the protection of life and property from floods.

ARTICLE II

As used in this compact:

"Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America;

"Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied;

"States of the Upper Division" means the states of Colorado, New Mexico, Utah, and Wyoming;

"States of the Lower Division" means the states of Arizona, California and Nevada;

"Lee's Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River;

"Upper Basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee's Ferry, also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee's Ferry;

"Lower Basin" means those parts of the states of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee's Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by the waters diverted from the system below Lee's Ferry;

"Domestic use" includes the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but excludes the generation of electrical power.

ARTICLE III

(a) The aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the state of California, including all uses under contracts made under the provisions of the Boulder Canyon Project Act and all waters necessary for the supply of any rights which may now exist, shall not exceed four million, four hun-

dred thousand acre-feet of the waters apportioned to the Lower Basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said Colorado River Compact, such uses always to be subject to the terms of said compact.

(b) Of the seven million, five hundred thousand acre-feet annually apportioned to the Lower Basin by paragraph (a) of Article III of the Colorado River Compact, there is hereby apportioned annually to the state of Nevada three hundred thousand acre-feet and annually to the state of Arizona two million, eight hundred thousand acre-feet for the exclusive beneficial consumptive use by said states of Nevada and Arizona, respectively, in perpetuity.

(c) The state of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River Compact.

(d) In addition to the water covered by paragraphs (b) and (c) hereof, the state of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of the state of Arizona in perpetuity.

(e) The waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico, but if, as provided in paragraph (c) of Article III of the Colorado River Compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said Colorado River Compact, then the state of California shall and does mutually agree with the state of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the Lower Basin.

(f) Neither the states of Arizona, California nor Nevada will withhold water nor require the delivery of water which can not reasonably be applied to domestic and agricultural uses.

(g) All the provisions of this compact or agreement shall be subject in all particulars to the provisions of the Colorado River Compact.

ARTICLE IV

This compact or agreement shall take effect and become binding and obligatory when it shall have been approved by the Congress of the United States of America, by the legislatures of each of the states of Arizona, California and Nevada and when the states of Arizona, California and Nevada shall have ratified the Colorado River Compact. When approved by the legislature of a signatory state the original and four copies of this compact or agreement shall be signed by the governor of such state and notice of such approval and signing shall be given by such governor to the governors of the other signatory states and to the President of the United States of America. The governor last signing shall forward the original copy for deposit in the archives of the Department of State of the United States of America and one copy to the governor of each of the other signatory states.

IN WITNESS WHEREOF this compact or agreement is executed.

STATE OF ARIZONA
By .....
Governor, at Phoenix, Arizona
....., 19.....

STATE OF CALIFORNIA
By .....
Governor, at Sacramento, Cal.
....., 19.....

STATE OF NEVADA
By .....
Governor, at Carson City, Nev.
....., 19.....

75-1602. ACCEPTANCE BY ARIZONA. — The proposed agreement between the states of Arizona, California and Nevada, as set forth in section 1 [75-1601] of this act, is approved and accepted for the state

of Arizona. The governor of the state of Arizona is authorized and directed to sign said agreement for the state of Arizona, and to give notice of its approval as in said agreement provided.

75-1603. CONDITIONAL APPROVAL OF COLORADO RIVER COMPACT.—If the agreement set forth in section 1 [75-1601], of this act, be approved by the Congress of the United States, and the states of California and Nevada within one [1] year after the effective date of this act, or within a period of one [1] additional year thereafter provided the governor of the state of Arizona shall by proclamation so extend the period for such approval, the Colorado River Compact shall thereupon be and become by the terms of this act ratified for and on behalf of the state of Arizona.

APPENDIX No. 8

1944 LEGISLATION RATIFYING THE SEVEN-STATE COMPACT ARIZONA

(Act approved February 24, 1944; Ch. 5, 17th Legislature; Session Laws of Arizona, 1944, pp. 427-428)

CHAPTER 5
(Senate Bill No. 1)

An Act ratifying the Colorado River Compact, and declaring an emergency.

Be it enacted by the Legislature of the State of Arizona:

SECTION 1. RATIFICATION. The Colorado River Compact executed at Santa Fe, New Mexico, November 24, 1922, by representatives of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming is unconditionally ratified, approved and confirmed.

SEC. 2. EMERGENCY. To preserve the public peace, health and safety it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor February 24, 1944.

Filed in the Office of the Secretary of State February 24, 1944.

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FILED
OCT 7 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 10 Original

STATE OF ARIZONA

v.

STATE OF CALIFORNIA, ET AL.

REJOINDER OF DEFENDANTS TO COMPLAINANT'S REPLY TO DEFENDANTS' ANSWER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 10 Original

STATE OF ARIZONA

v.

STATE OF CALIFORNIA, ET AL.

REJOINDER OF DEFENDANTS TO COMPLAINANT'S REPLY TO DEFENDANTS' ANSWER

Defendants, by their duly authorized attorneys, jointly make the following Rejoinder to Complainant's Reply to Defendants' Answer herein.

1.

As to the new allegations contained at page 4 of Complainant's Reply, to the effect that on or about November 18, 1922, at Santa Fe, New Mexico, the provisions of Article III (b) of the Colorado River Compact were prepared and inserted in said Compact solely and entirely for the purpose of recognizing the use by Arizona of approximately

1,000,000 acre-feet per year of water of the Gila River, and that such was the understanding of the Arizona Commissioner, defendants allege and deny as follows:

(a) Defendants allege that evidence of the said alleged understanding was held by this Court in *Arizona* v. *California*, 292 U. S. 341 (1934), to be inadmissible to contravene the terms of the Colorado River Compact, and further allege that Appendixes 2, 3, 4 and 6 annexed to the Reply are substantially the same evidence as was sought to be perpetuated in that case by Arizona.

(b) The Complaint and Arizona's Reply fail to allege that any such alleged understanding was ever communicated to the legislature of any State or to the Congress. Defendants allege: Neither the Congress which approved the Colorado River Compact nor the Legislatures of the States which ratified said Compact were advised of Complainant's present contention that the water referred to in Article III (b) was earmarked by the Colorado River Commissioners for Arizona as distinguished from the states of the Lower Basin collectively, and this contention was not asserted in any form until many years after the Legislatures of Colorado, Wyoming, Utah, New Mexico, California, and Nevada had ratified, and the Congress had granted its consent to, the Colorado River Compact. For said reasons, evidence of any such understanding as is alleged in the said Reply would be inadmissible for any purpose in this case.

(c) If the understandings or purposes of the Colorado River Commissioners at Santa Fe in November 1922 should be deemed material, relevant or competent, defendants deny that said Commissioners or any

of them prepared or inserted the provisions of Article III (b) in the Colorado River Compact solely or entirely for the purpose of recognizing Arizona's use of 1,000,000 acre-feet or any other amount of water of the Gila River. To the contrary, defendants allege as follows: The Colorado River Commissioners intended and understood that the provisions of Article III(b) of the Colorado River Compact related to the use of the waters of the Colorado River System as a whole and not to any specific part thereof such as the Gila River or its tributaries, and said Commissioners further intended and understood that the increase of use of 1,000,000 acre-feet per annum referred to in Article III (b) was made available for use in the Lower Basin States collectively and not in any one State individually. Defendants further allege that the express provisions of the Colorado River Compact are in accordance with said intentions and understandings of said Commissioners.

2.

As to the new allegations contained at pages 7 and 8 of Complainant's Reply under the heading "Action by Arizona on the Proposed Tri-State Compact", defendants deny that the Arizona Legislature in 1939 or at any other time ratified the Tri-State Compact authorized by Paragraph 2 of Section 4(a) of the Boulder Canyon Project Act. The proposed Tri-State Compact which Complainant alleges it ratified, as the same appears in Appendix 7 to the Reply, differs materially from the terms of the Tri-State Compact authorized by Paragraph 2 of Section 4(a) of the Boulder Canyon Project Act (Appendix 2 to California's Answer) especially as follows: Whereas the Tri-State Compact authorized by the Boulder Canyon

Project Act would allot to Arizona the use of 2,800,000 acre-feet per year of water apportioned to the Lower Basin by Article III (a) of the Colorado River Compact and one-half of the excess or surplus water unapportioned by the Colorado River Compact, which said allotment to Arizona would by definition include the water of the Gila River and its tributaries, the proposed Tri-State Compact allegedly ratified by Arizona would allot to that State the use of the water of the Gila River and its tributaries "in addition to" (rather than as part of) 2,800,000 acre-feet per annum of water, the use of which is apportioned by Article III (a), and one-half of the excess or surplus water.

3.

As to Appendixes 2, 3, 4 and 6 to the Complainant's Reply, which said Appendixes purport to contain excerpts from testimony and evidence presented to various committees of the 79th, 80th and 81st Congresses of the United States in the years 1946, 1947 and 1949, defendants allege and deny as follows:

(a) The alleged testimony and evidence contained in said appendixes were held inadmissible by this Court in *Arizona* v. *California*, 292 U. S. 341 (1934).

(b) The testimony and evidence contained in said Appendixes are inadmissible in evidence, being incompetent, immaterial, and irrelevant to the issues of this case, in violation of the rules against the admission of hearsay evidence, and in violation of the parol evidence rule as in contravention of the Colorado River Compact.

(c) The Complaint and Reply fail to allege that the testimony and evidence contained in said appendixes were communicated to, presented to, or consid-

ered by the Congress which granted consent to the Colorado River Compact or the legislature of any State which ratified said Compact, and defendants allege that in fact, said testimony and evidence were not so communicated, presented, or considered.

(d) Defendants deny that the testimony contained in said Appendixes is in any way an accurate account of the facts and events referred to in said testimony.

4.

Reserving the right to object to the competency, materiality and relevancy of the allegations of Complainant's Reply and the Appendixes thereto, defendants deny all allegations of said Reply and the Appendixes thereto except as said allegations conform to the facts as alleged in Defendants' Answer and in this Rejoinder.

PRAYER

WHEREFORE, defendants pray:

1. That the Court decree that Complainant take nothing by its pleadings herein, and that defendants recover their costs and disbursements herein expended.

2. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

Respectfully submitted,

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No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS;

UNITED STATES OF AMERICA, INTERVENER

PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA

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UNITED STATES OF AMERICA, INTERVENER

PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA

The United States of America, by HERBERT BROWNELL, JR., the ATTORNEY GENERAL, and by leave first had and obtained, files this Petition of Intervention in the above entitled cause, and alleges and declares as follows:

PART ONE: INTRODUCTION AND BACKGROUND

I

The State of Arizona, as complainant, has invoked the original jurisdiction of this Court pursuant to the provisions of Article III, Section 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River, a navigable, interstate stream. Named by the State of Arizona as defendants in the cause are the State of California together with seven municipal corporations or public corporations existing pursuant to the laws of the State of California, all of which claim rights to the use of water in the Colorado River, which are described with particularity in the answer of those defendants to Arizona's Bill of Complaint. Arizona's motion for leave to file the complaint was granted on January 19, 1953.[1]

There was filed with this Court on December 31, 1952, by the United States of America a motion for leave to intervene in the cause initiated by the State of Arizona. This Court by its order of January 19, 1953, granted that motion to intervene.[2]

The State of California with the other defendants named by the State of Arizona answered the latter's Bill of Complaint, averring, among

[1] *Arizona* v. *California, et al.*, 344 U. S. 919 (1952).
[2] *Arizona* v. *California, et al.*, 344 U. S. 919 (1952).

other things, certain affirmative defenses. Pursuant to leave granted by this Court,[3] the State of Arizona filed on August 28, 1953, its Reply to Defendants' Answer, to which defendants filed a Rejoinder on October 8, 1953.

II

The State of Arizona, by its Bill of Complaint, seeks to have quieted its title to the rights to the use of certain water of the Colorado River System, as against the defendants; to have construed in the manner which it alleges in its Bill of Complaint the Colorado River Compact, the Boulder Canyon Project Act,[5] related laws, contracts and documents. It likewise seeks ancillary injunctive relief.

III

The State of California, joined by the other defendants, answered the Bill of Complaint; denied the principal contentions of the State of Arizona; asserted affirmative defenses; and averred their interpretation of the Colorado River Compact, the Boulder Canyon Project Act, related laws, contracts and documents.

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[3] *Arizona* v. *California, et al.*, 345 U. S. 968 (1952).

[4] *Arizona* v. *California, et al.*, 345 U. S. 968 (1952).

[5] 43 U. S. C. 617, et seq.

IV

DESCRIPTION OF THE COLORADO RIVER

Important in regard to the dispute between the principal litigants in this proceeding are the physical phenomena of the Colorado River and the region traversed by it. Rising in the State of Colorado near the crest of the Continental Divide at an elevation of approximately nine thousand feet above sea level, it flows for a distance of 1,293 miles, draining portions of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.

In its course the Colorado River traverses a semiarid area of approximately 240,000 square miles in which agriculture can be successfully practiced only through artificial irrigation. However, marked geographical and climatological differences exist between the upper reaches of the river and the lower.

Nearly 1,000 miles of canyon separate the lands upon which water may be beneficially applied in the upper States of the Colorado River Basin and those upon which water may be beneficially used in the Lower Basin.[6] The Upper Basin area is comprised of high elevations resulting in shorter growing seasons and lower demands for water and, by reason of the conformation of the

[6] The Colorado River Compact, Article II (f), (g), defines "Upper Basin" and "Lower Basin" as follows:

"Upper Basin" means those parts of the States of Arizona,

area, has a relatively high return flow. In the lower reaches of the stream, large areas susceptible of irrigation are found. Due to the extreme aridity of climate and the long growing season, the demand for water for each acre irrigated is high. Works of great magnitude with commensurate costs are required to irrigate those lands. Historically, commerce was carried on in the navigable lower reaches of the stream. Moreover, certain upper reaches of the stream have been declared by this Court to be navigable.

V

In its course the stream in question flows through the Western half of Colorado, the State of its origin, and then through the State of Utah where it has its confluence with the Green River which rises in Wyoming. After crossing the common boundary of Utah and Arizona, it proceeds

---

Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River above Lee Ferry.

"Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry. Likewise included in the Upper and Lower Basins are all parts of the States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above or below Lee Ferry.

"Lee Ferry" means a point on the main stream of the Colorado River a short distance below the common boundary of the States of Utah and Arizona.

in a south and westerly direction to a point where it forms the boundary between the State last mentioned and Nevada. For a distance of 145 miles, it separates the two States. Thereafter, for 235 miles it constitutes the boundary between Arizona and California. For 688 miles, more than half its length, the Colorado River flows in or upon the boundary of the State of Arizona.

VI

The Colorado River for a distance of sixteen miles constitutes the international boundary between the United States of America and the United Mexican States. The stream thence flows for a distance of 75 miles across Mexico where it empties into the Gulf of California.

VII

THE HISTORICAL NEED FOR SETTLEMENT OF THE CONFLICT BETWEEN THE BASINS

Shortly after the turn of the present century the claims to rights to the use of water in the natural flow of the Lower Basin of the Colorado River exceeded the available supply during the later summer months, with the attendant loss of crops due to the shortage of irrigation water. By way of contrast, early spring floods intermittently caused severe damage. Conservation of the run-off of the stream in the Lower Basin in high water periods, through regulatory dams and im-

pounding reservoirs, was essential. That development in the lower reaches of the river was impeded, however, by the need for an apportionment of the available supply of water between the Upper and Lower Basins of the river. Understandably, the States of the Upper Basin viewed with concern the possible loss of their rights to the Lower Basin should that development take place without some assurance that their future needs in the river would be protected.

VIII

THE "LAW OF THE RIVER"

To accomplish the required allotment and to insure the Upper Basin States that their rights would not be impaired by the development in the Lower Basin, the Colorado River Compact was formulated and signed November 24, 1922, by the several States of the Basin—Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.[7] By specific Act of Congress[8] and Presidential Proclamation,[9] the Colorado River Compact became effective June 25, 1929, though Arizona at that time failed to ratify it. Thus from its inception until ratified by the State of Arizona, the Colorado River Compact was a Six-State Compact.

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[7] Appendix VII A, Colorado River Compact.

[8] Appendix VII B, Boulder Canyon Project Act, 43 U. S. C. 617, et seq.

[9] 46 Stat. 3000.

One of the conditions to the requisite Congressional consent to the Compact was that "the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."[10] California complied with that condition.[11] It was not until February 24, 1944, that the State of Arizona ratified the Compact.

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[10] 43 U. S. C. 617c.

[11] Appendix VII C, Statutes and Amendments to the Codes of California, 1929 Extra Session, c. 16 "An act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the 'Boulder canyon project act' * * *."

IX

A. THE COLORADO RIVER COMPACT

By the Colorado River Compact there was apportioned in perpetuity from the Colorado River System to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use annually of 7,500,000 acre-feet of water.[12] In addition, there was given to the Lower Basin the right to increase its beneficial consumptive use of water by 1,000,000 acre-feet annually.[13] The point of division between the Upper and the Lower Basins is Lee Ferry, 23 miles below the common boundary of the State of Arizona and the State of Utah.[14] Provision is likewise made in the Compact that under prescribed conditions water unapportioned by the Compact may be allocated at any time subsequent to October, 1963.[15]

X

B. THE UPPER COLORADO RIVER BASIN COMPACT

Subject to the provisions of the Colorado River Compact, on October 11, 1948, the Upper Colo-

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[12] An acre-foot of water is equivalent to the quantity of water that will cover 1 acre (43,560 square feet) 1 foot deep.

[13] See footnote 6, supra, for the definitions of the "Upper Basin" and the "Lower Basin" of the Colorado River.

[14] Appendix VII A, Colorado River Compact, Article II (e), (f), (g).

[15] Appendix VII A, Colorado River Compact, Article III (a), (b), (c), (f).

rado River Basin Compact was entered into by the States of Arizona, Colorado, New Mexico, Utah and Wyoming, by which there was apportioned in perpetuity among those States the consumptive use of water apportioned in perpetuity and available for use each year to the Upper Basin under the Colorado River Compact.

XI

All of the federal laws to which reference has been made in the preceding paragraphs were enacted, and virtually all of the contracts regarding the delivery of water alluded to hereafter in this pleading were entered into, prior to the effective date of the Treaty between the United States of America and the United Mexican States referred to below in paragraph XIII.

PART TWO: INTERESTS OF THE UNITED STATES OF AMERICA IN THE COLORADO RIVER SYSTEM

XII

There follows, in paragraphs XIII through XXX of this pleading, a description of the specific interests of the United States of America in the Colorado River System and in the resolution of the controversy between the plaintiff and the defendants. These interests fall into the following main categories:

A. The Treaty with Mexico (paragraph XIII).

B. Contracts for the delivery of im-

pounded water which depend for their proper performance on the meaning of the Colorado River Compact and the Boulder Canyon Project Act (paragraphs XV through XX).

C. The structures and projects constructed under or pursuant to the Reclamation Act of 1902, or comparable statutory authority, or international obligations, and in which the United States has a present, direct interest which will be affected by the resolution of the controversy between the parties. These are the Boulder Canyon Project, Davis Dam and appurtenant structures, Parker Dam and appurtenant structures, the Yuma Project, including Laguna Dam, the Gila Project, the Yuma Auxiliary Project, and the Salt River Project (paragraphs XIV, XXII, XXIII, XXIV).

D. The claims of the Indians and the Indian Tribes (paragraphs XXV through XXVII).

E. Other federal interests, including the generation of electricity, flood control and navigation interests and projects, fish and wildlife projects, and the public lands in that area (paragraphs XXI, XXVIII and XXIX).

Because of the adverse character of the claims asserted by the parties to this cause and their divergent construction of the fundamental laws upon which each predicates its respective claims, the United States of America is in grave doubt

in regard to its rights and obligations with respect to the waters of the Colorado River System and cannot safely exercise its rights, fulfill its responsibilities, or perform its duties, without great hazard to itself and to the parties themselves, in connection with the foregoing five categories of interests. For these reasons, it is important to the United States that the conflicts between the parties be resolved and that the rights and interests of the United States be protected in the course of that resolution.

XIII

TREATY WITH MEXICO

The United States of America in connection with the Colorado River has international obligations arising from its Treaty with the United Mexican States relating to the utilization of the waters of that stream, the Tijuana River and the Rio Grande River. That covenant was signed February 3, 1944, was ratified by the Senate of the United States of America on April 18, 1945, and by the United Mexican States on October 16, 1945. It was proclaimed by the President of the United States on November 27, 1945, and became effective November 8, 1945.[16] Pursuant to that Treaty, the United States of America, among other things, and subject to certain limitations, "guaranteed" to Mexico an annual quan-

[16] Treaty between the United States of America and the United Mexican States—See 59 Stat. 1219.

tity of 1,500,000 acre-feet of Colorado River water.

XIV

BOULDER CANYON PROJECT AND OTHER DEVELOPMENTS TO IMPOUND OR DIVERT THE WATERS OF THE COLORADO RIVER FROM THE MAIN CHANNEL OF THAT STREAM

Pursuant to the Boulder Canyon Project Act and to the Reclamation Act of 1902,[17] and acts amendatory of those acts or supplementary to them, and international obligations of the United States of America, the Secretary of the Interior undertook the construction of gigantic projects involving the expenditure of virtually one-half billion dollars. The objectives of the Boulder Canyon Project Act in connection with the development of the Colorado River in the Lower Basin are: the controlling of the floods, improving navigation, regulating the flow of the Colorado River, providing for storage, for the delivery of the stored waters for reclamation of public lands, the generation of electrical energy, and other beneficial uses.[18] In addition, certain of the structures are operated for the purposes, among others, of making possible the regulation of the waters of the Colorado River to meet the demands of Mexico under the Mexican Water

[17] Act of June 17, 1902, Ch. 1093, 32 Stat. 388, 43 U. S. C. 391.

[18] 43 U. S. C. 617.

Treaty. Included in that development of the Lower Basin of the Colorado River are the following components in the operation of which the United States has a direct and immediate interest, and which it owns and operates through the Department of the Interior: Hoover Dam, Davis Dam, Parker Dam, Imperial Dam, Laguna Dam. The United States also owns but does not operate the All-American Canal and Coachella Canal. Other structures on the main river are the Colorado River Aqueduct, which is owned and operated by the Metropolitan Water District of Southern California, a defendant in this cause, and the Palo Verde Weir, which is owned and operated by the United States of America, but is the means by which water from the Colorado River is diverted for use for the Palo Verde Irrigation District, a defendant in this cause. All those structures are more fully described in Appendix I A of this Petition.

XV

FEDERAL CONTRACTS FOR THE DELIVERY OF WATER IMPOUNDED BY HOOVER DAM

Pursuant to and in accordance with the authority vested in him by the Boulder Canyon Project Act, the Secretary of the Interior has entered into contracts with the defendants Metropolitan Water District of Southern California, the Imperial Irrigation District, Palo Verde Irrigation District and Coachella Valley County Water District for the delivery annually of

5,362,000 acre-feet of Colorado River water stored at Hoover Dam. A contract originally entered into with the defendant City of San Diego has been superseded by subsequent arrangement with the Metropolitan Water District of Southern California. Moreover, though the defendant City of Los Angeles does not have a contract, it is a prime beneficiary of the contract between the United States of America and the defendant Metropolitan Water District of Southern California.[19]

XVI

Pursuant to an agreement dated August 18, 1931, the defendants Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, California, City of San Diego, California, and County of San Diego, California, entered into an agreement "Requesting the Division of Water Resources of the State of California to Apportion California's Share of the Waters of the Colorado River Among the Various Applicants and Water Users Therefrom in the State, Consenting to Such Apportionments, and Requesting Similar Apportionments by the Secretary of the Interior of the United States."[20]

[19] Appendix IV D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, List of Water Contracts.

[20] Appendix VII D, Seven-Party Water Agreement, August 18, 1931.

The provisions of this covenant, generally referred to as the Seven-Party Agreement, relating to the respective priorities of those joining in it are set forth in full in each of the contracts referred to in paragraph XV. By it, the waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act are apportioned in amounts and in accordance with the priorities therein stipulated.

XVII

The United States of America, pursuant to the contracts above described and in accordance with the Seven-Party Agreement, delivers the waters impounded at Lake Mead for beneficial uses:[21]

1. To the Metropolitan Water District of Southern California for diversion at Parker Dam, through the Colorado River Aqueduct.

2. To the Palo Verde Irrigation District, at the Palo Verde Weir situated approximately 212 miles downstream from Hoover Dam.

3. To the Imperial Irrigation District and the Coachella Valley County Water District, at the Imperial Dam situated 303 miles below Hoover Dam.

[21] Lake Mead is the storage reservoir of Hoover Dam.

(The structures referred to in this paragraph, as well as other structures and projects on the main channel of the Colorado River in which the United States has an interest, are described in Appendix I A.)

XVIII

Exercising the authority vested in him by the Boulder Canyon Project Act, the Secretary of the Interior, on behalf of the United States, entered into a contract dated March 30, 1942, as amended January 3, 1944, with the State of Nevada for the delivery annually of 300,000 acre-feet of water.[22]

XIX

Exercising the authority vested in him by the Boulder Canyon Project Act, the Secretary of the Interior, on behalf of the United States, entered into a contract dated February 9, 1944, with the State of Arizona for the delivery annually of 2,800,000 acre-feet of water, subject to the terms and conditions prescribed in that contract. Subject to the contract last mentioned, the Secretary of the Interior likewise entered into a contract dated March 4, 1952, with the Wellton-Mohawk Irrigation and Drainage District for the delivery of water to the Gila Project in the State of Arizona (described below in paragraph XXIII).[23]

[22] Appendix IV B, C, List of Water Contracts; Appendix VI A and B.

[23] Appendix IV A, T, List of Water Contracts.

XX

The contracts which the Secretary of the Interior entered into as set forth in the preceding paragraphs XV through XIX provide for the delivery annually of 8,462,000 acre-feet of water stored at Hoover Dam. Contained in each of the contracts is a provision that the delivery of water by the United States will be from available storage, all to be in accordance with the Colorado River Compact and the Boulder Canyon Project Act. Because of the incorporation in these contracts of the limitations and provisions of the Boulder Canyon Project Act and the Colorado River Compact, it is essential that the United States know the proper interpretation of those provisions of the Act last mentioned and the Compact which are in dispute between the parties. As more particularly alleged in paragraphs XXXI through XXXIX below, Arizona and the defendants are in controversy as to the meaning of the limiting provisions of the Boulder Canyon Project Act and the Colorado River Compact, and the United States is therefore uncertain as to how much water it may properly deliver annually under the aforesaid contracts.

XXI

POWER CONTRACTS

The United States of America, pursuant to the Boulder Canyon Project Act and the Boulder

Canyon Project Adjustment Act,[24] has also entered into contracts for the sale of electricity generated through the use by the United States of Colorado River water at the power plant constructed and operated by the United States in connection with the Boulder Canyon Project. Contracts have likewise been entered into by the United States for the sale of electricity generated at Parker and Davis Dams through the use by the United States of Colorado River water.[25] For that reason, the United States has an additional interest in connection with the proper operation of the structures of the Boulder Canyon Project and the dams last mentioned.

XXII

YUMA PROJECT

The Yuma Project, situated in the States of Arizona and California, was constructed pursuant to the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto. Title to the principal project works is in the United States and those structures are operated and maintained by it.

Colorado River water for the Yuma Project is diverted through the All-American Canal. For that land situated in the State of California, turn-

[24] 54 Stat. 774.

[25] Appendix V, Tabulation of sources of electricity and those holding contracts for its purchase.

outs have been constructed in the All-American Canal. The lands of the Yuma Project situated in the State of Arizona receive Colorado River water through the All-American Canal by means of a turnout from that structure at a point approximately 15 miles from the point of diversion, which is known as Siphon Drop. (See the description of the All-American Canal in Appendix I A.) There, 2,000 c. f. s.[26] of water are diverted through the Siphon Drop Power Plant and approximately 800 c. f. s. are thence taken by siphon under the Colorado River for use in Arizona. The Yuma Project is more specifically described in Appendix I B of this Petition.

XXIII

GILA PROJECT

Subject to the provisions of the Boulder Canyon Project Act and the provisions of the Colorado River Compact, the United States of America undertook the construction of the Gila Project; the United States retains title to the principal project works which it operates and maintains. Colorado River water is delivered to that Project pursuant to the contract between the United States of America, the State of Arizona, and the Wellton-Mohawk Irrigation and Drainage District.[27] The following excerpt from the Congressional en-

[26] "c. f. s." is the measure of the number of cubic feet of water passing a given point in one second of time.

[27] Appendix IV T, List of Water Contracts.

actment authorizing the Gila Project defines its scope and purpose:

> That for the purpose of reclaiming and irrigating lands in the State of Arizona and other beneficial uses, the reclamation project known as Gila project, heretofore authorized and established under the provisions of the reclamation laws, the Act of June 16, 1933 (48 Stat. 195), and various appropriation Acts, is hereby reduced in area to approximately forty thousand irrigable acres of land (twenty-five thousand acres thereof situated on the Yuma Mesa and fifteen thousand acres thereof within the North and South Gila Valleys), or such number of acres as can be adequately irrigated by the beneficial consumptive use of no more than three hundred thousand acre-feet of water per annum diverted from the Colorado River, and as thus reduced is hereby reauthorized and redesignated the Yuma Mesa division, Gila project, and the Wellton-Mohawk division, Gila project, comprising approximately seventy-five thousand irrigable acres of land, or such number of acres as can be adequately irrigated by the beneficial consumptive use of no more than three hundred thousand acre-feet of water per annum diverted from the Colorado River, * * *.[28]

The Gila Gravity Main Canal serves the Gila Project in the State of Arizona. Its headworks

[28] Act of July 30, 1947, Public Law No. 272, 80th Cong., 1st Sess.

are situated on the Arizona side of the Imperial Dam described in Appendix I A. This Project is more particularly described in Appendix I C of this Petition. Water is also delivered through Gila Project works to the Yuma Auxiliary Project in Arizona.

XXIV

SALT RIVER PROJECT

The Salt River Project in the State of Arizona has its source of supply from the Salt River, a tributary of the Gila River. The project was undertaken pursuant to the Reclamation Act of 1902, and acts amendatory thereof and supplementary thereto. This Project is more particularly described in Appendix I D of this Petition. Certain of the structures comprising the Project have been financed by others; however, the United States has title to those and to the other principal structures of the Project. The structures of the Salt River Project are: Roosevelt Dam, Bartlett Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Cave Creek Dam, Horseshoe Dam and Granite Reef Diversion Dam.

CLAIMS FOR AND ON BEHALF OF THE INDIANS AND INDIAN TRIBES IN THE LOWER BASIN OF THE COLORADO RIVER IN THE STATES OF ARIZONA AND CALIFORNIA

XXV

It is provided in the Colorado River Compact that:

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."[29]

XXVI

Headgate Rock Dam is a principal structure across the main channel of the Colorado River diverting water for the Colorado River Indian Reservation. On the Gila River is situated Coolidge Dam which impounds waters for diversion and use on the San Carlos Indian Project and for other uses. These structures are more particularly described in Appendix II B of this Petition.

XXVII

The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix II A of this Petition.

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[29] Appendix VII A, Colorado River Compact, Article VII.

XXVIII

FISH AND WILDLIFE PROJECTS

The United States of America, in connection with the waters of the Colorado River, has international obligations stemming from conventions concluded between it and Great Britain,[30] and between it and Mexico,[31] having as their objective the conservation of wildlife. The United States of America, pursuant to those international conventions, has the duty to preserve, develop and replace natural wildlife habitat through the establishment and maintenance of wildlife refuges and management areas. Those wildlife refuges and management areas together with the claims in connection with them are set forth in Appendix III of this Petition.

XXIX

FLOOD CONTROL AND NAVIGATION.

Pursuant to the Boulder Canyon Project Act and related laws, Hoover Dam, Davis Dam and Parker Dam are operated, among other things, "for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, * * *." The waters impounded by those structures are administered in a manner which effectuates the Congressional intendment in regard to flood control and navigation.

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[30] 39 Stat. 1702.

[31] 50 Stat. 1311.

Other flood control activities of the United States of America involve the Gila River and its tributaries [32] and the Bill Williams River.[33]

XXX

GENERAL CLAIMS OF THE UNITED STATES OF AMERICA IN THE COLORADO RIVER SYSTEM IN THE LOWER BASIN

The United States of America asserts claims, as against the parties to this cause, of rights to the use of water in the Colorado River and its tributaries (a) for the purposes of, and which will yield quantities of water sufficient to satisfy the maximum legal demands for, the various projects and the components of which those projects are comprised, all as alluded to in this Petition or its appendixes, to the full capacity of the diversion, carrying, and storage structures described in this Petition and its appendixes; (b) to fulfill its obligations arising from its international treaties or conventions, and from its contracts to deliver water and electric power; (c) to fulfill the obligations emanating from its status as trustee for the Indians and Indian Tribes; and (d) to protect its interests in fish and wildlife, flood control, and navigation.

These claims of the United States are jeopardized because the aggregate of the claims of the present parties to this cause far exceeds the quantity of water apportioned to the Lower Basin

[32] House Document No. 331, 81st Cong., 1st Sess.
[33] House Document No. 625, 78th Cong., 2d Sess.

of the Colorado River by the Colorado River Compact, and a resolution of the controversy between the parties may therefore infringe upon the interests of the United States to its detriment. In addition, the United States is in doubt as to its obligations and responsibilities under its contracts, the Colorado River Compact, and the Boulder Canyon Project Act, as amended and supplemented, because the parties have put forth differing and inconsistent interpretations of significant portions of those documents which affect the rights, obligations, and responsibilities of the United States. See paragraphs XXXI through XXXIX below.

The United States of America also has claims throughout the States of Arizona and California in connection with the Colorado River and its tributaries for the use of the National Park Service and the Bureau of Land Management of the Department of the Interior, and the Forest Service of the Department of Agriculture. In the event those claims are in any way put in issue or jeopardized in this litigation, the United States of America reserves the right to assert them.

Due to the insufficient supply of water apportioned to the Lower Basin by the Colorado River Compact to meet the aggregate of the adverse claims of all parties to this cause, there is a pressing need for a decree by this Court declaring, determining, confirming and quieting the title of all parties to their respective rights and interests in and to the waters of the Colorado

River. Absent such a decree by this Court, the protracted conflict giving rise to this cause will continue to the detriment of all parties.

PART THREE: SPECIFIC RESPONSE OF THE UNITED STATES OF AMERICA TO THE PLEADINGS OF THE PARTIES

XXXI

The United States of America, in response to the Bill of Complaint of the State of Arizona, the answer of the defendants to the Bill of Complaint, the reply of the State of Arizona to the defendants' answer, and defendants' rejoinder to Arizona's reply, makes the following additional allegations, averments and denials:

(a) The United States of America alleges that its treaties and international conventions alluded to above are legal and enforceable obligations assumed by the United States of America and binding upon itself and all parties to this cause; that the Colorado River Compact is a valid and binding covenant among all of the States in the Colorado River Basin; that the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act and all supplemental legislation, both Federal and State, are valid and enforceable enactments pursuant to which the parties to the cause have received benefits; that each and every contract entered into by the United States of America

involving the use and delivery of water or electric power pursuant to the aforesaid compacts and legislation are valid, binding covenants constituting the measure of the rights of the parties to the extent that they are reflected by those covenants.

(b) The United States of America denies each and every allegation of the parties to the cause in their respective pleadings with reference to these treaties, conventions, compacts, documents, laws and contracts which in any way contravenes, contests, or challenges the validity of them or any provision or provisions of them; admits that the excerpts in the pleading from the laws, compacts, contracts and documents are correct as alleged, but for greater clarity and certainty in connection with each, refers to the laws, compacts, contracts and documents themselves.

XXXII

The United States of America, in response to paragraphs VII and XXII of the Bill of Complaint (which set forth the principal questions which the State of Arizona petitions this Court to decide), to paragraph 53 of the Traverse in the Answer of Defendants, to paragraph 8 of the First Affirmative Defense, to the corresponding paragraphs of the Reply of Arizona to the Defendants' Answer and the Rejoinder of Defendants to Arizona's Reply, as well as to the other

portions of the pleadings relating to the interpretation of the Colorado River Compact, admits that a controversy exists between the State of Arizona and the defendants as to the interpretation, construction, and application of the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, all as alleged in those portions of the pleadings.

1. By way of further response, the United States of America refers to the inquiry presented in subdivision (1) of paragraph XXII of the Bill of Complaint, which is as follows: "Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?" The State of Arizona avers that the waters in question are apportioned and that by reason of the Boulder Canyon Project Act and the California Limitation Act the defendants are precluded from participating in the so-called Article III (b) water.

In paragraph 68 of their Traverse and in paragraph 27 of the First Affirmative Defense in their Answer, the defendants deny Arizona's contention respecting the interpretation to be placed upon the clause of the Colorado River Compact in question.

Respecting those diametrically opposed positions, the United States is informed and believes and therefore alleges that if the interpretation urged by the State of Arizona is declared by this

Court to be correct, there will accrue to that State the right to the beneficial consumptive use of virtually all of the water referred to in the aforesaid Article III (b) of the Colorado River Compact, or approximately 1,000,000 acre-feet of water annually; whereas if the contentions of the defendants are declared by this Court to be correct, the State of Arizona will be entitled to the right to the beneficial consumptive use of approximately 500,000 acre-feet of water annually under Article III (b) of the Compact with a commensurate increase in the right to the beneficial consumptive use of water to the defendants under Article III (b) of the Compact. The obligations of the United States under the contracts referred to in this Petition, the operation of the projects and structures likewise described in this Petition, as well as the nature, character and extent of the rights and interests of the United States of America in the Lower Basin of the Colorado River, depend upon the resolution of this controversy between the parties; the United States is therefore in doubt as to its duties and rights and needs the determination by this Court of this issue.

2. By way of further response to the above-mentioned paragraph XXII, the United States of America refers to the inquiry presented in subdivision (2) of paragraph XXII which is as follows: "How is beneficial consumptive use to be

measured?" The State of Arizona avers that the Colorado River Compact does not apportion water but rather apportions the beneficial consumptive use of water, further alleging that beneficial consumptive use is measured in the terms of man-made depletions to the main stream of the Colorado River.

In paragraph 68 of the Traverse of their answer, the defendants specifically deny the interpretation urged by the State of Arizona, alleging in substance (in paragraphs 8 and 9 of their First Affirmative Defense in their answer) that beneficial consumptive use as used in the Compact is to be measured by diversion of water less return flow to the river.

The United States of America is informed and believes and therefore alleges that the difference between the two methods of measuring beneficial consumptive use of water asserted by the parties involves approximately 1,000,000 acre-feet; that if this Court declares that the interpretation of the clause in question urged by the State of Arizona is correct, there will accrue annually to that State all or most of that approximately 1,000,000 acre-feet of water over that quantity the State would receive if the defendants' interpretation is declared by this Court to be correct; and should defendants' interpretation be declared by this Court to be correct, there will be an attendant increase annually to the defendants of that

quantity of water. The obligations of the United States under the contracts referred to in this Petition, the operation of the projects and structures likewise described in this Petition, as well as the nature, character and extent of the rights and interests of the United States of America in the Lower Basin of the Colorado River, depend upon the resolution of this controversy between the parties; the United States is therefore in doubt as to its duties and rights and needs the determination by this Court of this issue.

3. By way of further response, the United States of America refers to the inquiry presented in subdivision (3) of paragraph XXII which is as follows: "How are evaporation losses from Lower Basin main stream storage reservoirs to be charged?" The State of Arizona alleges that the losses amount to over 700,000 acre-feet of water annually and that such losses should be apportioned among the users from the main stream storage in the Lower Basin in the same proportion as the consumptive use of each is to the total consumptive use of such storage in the Lower Basin.

The defendants specifically controvert that allegation in paragraph 68 of their Traverse and in paragraph 27 of the First Affirmative Defense in their answer, denying that the quantities of water which they are entitled to have delivered to them by the United States of America are sub-

ject to reduction as a consequence of reservoir evaporation.

Regarding the extent of the evaporation losses to which reference is made in the inquiry in question, the United States of America is informed and believes and therefore alleges that the losses will be in excess of 900,000 acre-feet annually. The obligations of the United States under the contracts referred to in this Petition, the operation of the projects and structures likewise described in this Petition, as well as the nature, character and extent of the rights and interests of the United States of America in the Lower Basin of the Colorado River, depend upon the resolution of this controversy between the parties; the United States is therefore in doubt as to its duties and rights and needs the determination by this Court of this issue.

XXXIII

The United States of America avers that the aggregate of the claims to rights to the use of water in the Lower Basin of the Colorado River far exceeds the 8,500,000 acre-feet of water available to that Basin under the Colorado River Compact. Thus it is an imperative necessity to have finally resolved the questions propounded by the State of Arizona and the correlative inquiries presented by the defendants in connection with paragraph XXII of the Bill of Complaint.

Absent a determination by this Court in regard to each of the questions presented, the United States of America, in connection with its interests, obligations, and responsibilities alluded to above, is and will be in grave doubt and cannot safely exercise its rights or perform its duties relating to the projects and rights to the use of water above described without great hazard to itself and to the parties themselves, and therefore respectfully requests this Court to resolve the conflicts as to the meaning of the Compact to which reference has been made in paragraph XXXII above, to the end that there may be delivered to the respective parties the quantities of water to which they are legally entitled.

XXXIV

The United States of America, responding to Paragraph IX of the Bill of Complaint, particularly subdivisions (c) and (d), denies that Section 8 and Section 13 (b), (c) and (d) of the Boulder Canyon Project Act subject all of its rights to the provisions of the Colorado River Compact and in that connection refers to the Colorado River Compact itself for greater certainty and clarity, particularly Article VII of the Compact. The United States of America, in regard to the aforesaid Paragraph IX of the Bill of Complaint and to the Traverse of the defendants, paragraph 55, as well as other por-

tions of the pleadings heretofore filed, points to the conflict among the parties in regard to the interpretation to be placed upon the Boulder Canyon Project Act and avers that, in the absence of a determination by this Court in regard to that Act and the several controversial provisions of it, the United States of America is and will be in grave doubt and cannot safely exercise its rights and perform its duties in connection with its rights, responsibilities, and obligations respecting the Colorado River without grave hazard to itself and to the parties themselves and, therefore, respectfully requests this Court to resolve the conflict as to the Boulder Canyon Project Act, presented by the paragraphs of the pleadings to which reference has here been made.

XXXV

The United States of America, in response to Paragraph XI of the Bill of Complaint of Arizona and to the Traverse of the defendants, paragraph 57, the corresponding paragraph of Arizona's reply to the defendants' answer, as well as other relevant portions of the pleadings, admits that the Secretary of the Interior contracted for the delivery of Colorado River water in the quantities mentioned in that paragraph of the Bill of Complaint, and for greater clarity and certainty refers to the contracts themselves, which are described above and in Appendix IV;

denies the allegations respecting the validity of those contracts and in that regard refers to the conflict among the parties to the cause, and avers that, in the absence of a determination by this Court as to the validity and construction of the contracts in question, the United States of America is and will be in grave doubt and cannot safely exercise its rights, perform its duties, meet its responsibilities or fulfill its obligations respecting the Colorado River without great hazard to itself and to the parties themselves, and therefore respectfully requests this Court to resolve the conflict as to the validity and construction of these contracts, presented by the paragraphs of the pleadings to which reference has here been made.

XXXVI

The United States of America, in response to Paragraph XIII of the Bill of Complaint of Arizona and to the Traverse of the defendants, paragraph 59, the corresponding paragraphs of Arizona's reply, and other relevant portions of the pleadings, admits the ratification by the State of Arizona of the Colorado River Compact on February 24, 1944, and that the United States entered into a contract as alleged in Paragraph XIII of the Bill of Complaint; refers to the allegation, denied by the defendants, that the aforesaid contract does not apply to the Gila

River or its tributaries, but for greater clarity and certainty refers to the contract itself, which is described above; the United States of America avers that, in the absence of a construction by this Court of the contract alluded to in that paragraph of the Bill of Complaint, the United States is in grave doubt and cannot safely exercise its rights and perform its duties in connection with its rights, responsibilities and obligations respecting the Colorado River without great hazard to itself and to the parties themselves and therefore respectfully requests this Court to resolve the conflict as to this contract with Arizona, presented by the paragraphs of the pleadings to which reference has here been made.

XXXVII

The United States of America, in response to Paragraph XVIII of the Bill of Complaint, to paragraph 14 of the First Affirmative Defense of the defendants, to the Traverse of the defendants, paragraph 64, to the corresponding paragraphs of the reply of the State of Arizona to the defendants' answer, and to other relevant portions of the pleadings, refers to the allegation of the State of Arizona that there is no controversy which relates to the use of the waters of the Colorado River System by Indians or Indian Tribes and to the counter allegation of the defendants denying the assertions of the State of Arizona and declaring that all beneficial consump-

tive uses of water by Indian Tribes pursuant to obligations of the United States to such Tribes are chargeable to the beneficial consumptive uses available to the Basin under the Compact, and to the State in which such uses are situated, and to the allegations of the defendants that all beneficial consumptive uses in Arizona of Colorado River System water, whether by Indians or others, are chargeable to Arizona under its contract with the United States of America; makes reference to paragraph XXVII of this Petition, in which the rights of the Indians and Indian Tribes as asserted by the United States are set forth, and for greater clarity and certainty to the Colorado River Compact itself, particularly Article VII thereof, and likewise makes reference to the contract between the United States of America and the State of Arizona.

The United States of America denies each and every allegation of the paragraphs of the pleadings of the parties to which reference has here been made and alleges that the rights to the use of water of the Indians and Indian Tribes are in no way subject to or affected by the Colorado River Compact. Further in response to the allegations of the parties, the United States of America refers to its obligations to the Indians and Indian Tribes; to the conflicting claims of the parties over their respective rights to the use of water; to the fact that the aggregate of the

claims of the parties to this cause far exceeds the supply of water available under the Colorado River Compact to the Lower Basin of that river; and to the claims asserted by the parties adverse to the rights to the use of water in the Colorado River System of the Indians and Indian Tribes in the States of Arizona and California. The United States of America further alleges that the conflict among the parties to this cause directly and adversely affects the rights to the use of water in the Colorado River System of the Indians and Indian Tribes in the States of Arizona and California; and that until the respective rights of the parties to this cause and the rights of the Indians and Indian Tribes are determined, the United States of America will be in grave doubt and cannot exercise the claims which it asserts for itself and on behalf of the Indians and Indian Tribes or perform its duties in connection with those rights, responsibilities and obligations in regard to the Colorado River without great hazard to itself and to the parties themselves. Therefore the United States of America respectfully requests this Court to declare and determine the rights of the Indians and Indian Tribes in the Lower Basin of the Colorado River and to resolve the conflicts on this issue presented by the respective pleadings of the parties to this cause.

XXXVIII

Responding further to the allegations of the parties as set forth in the Bill of Complaint of the State of Arizona, the Answer of Defendants to Bill of Complaint, the Reply to Defendants' Answer by the State of Arizona, and the Rejoinder of Defendants to Complainant's Reply to Defendants' Answer, the United States of America:

a. Denies each and every argument, conclusion of law and allegation containing mixed conclusions of law and averments of fact alleged in the respective pleadings of the State of Arizona and the defendants;

b. Denies each and every allegation of fact in the respective pleadings of the State of Arizona and the defendants which is substantially at variance with or contrary to the facts as alleged in this Petition or in the appendixes of this Petition; each and every appendix referred to in this Petition is incorporated into it by reference and made a part of it.

c. Admits each and every other well-pleaded fact alleged by the State of Arizona and the defendants in their respective pleadings, except as to those facts which are expressly denied or are substantially at variance with the facts as herein alleged.

CONCLUSION AND PRAYER

XXXIX

In summary and conclusion, the United States of America alleges that the aggregate of the claims of the parties to this cause far exceeds the quantity of water available to the Lower Basin of the Colorado River under the Colorado River Compact; that the parties assert claims to rights to the use of water adverse to each other, and bring into question and allege rights adverse to the rights to the use of water and the interests, responsibilities, claims, and obligations of the United States of America in the Lower Basin of the Colorado River; that the parties likewise seek different interpretations of the several provisions of the Colorado River Compact, the Boulder Canyon Project Act, and related laws and documents by reason of which the United States is and will be in grave doubt and cannot safely exercise its rights and perform its duties in connection with the projects and rights of the United States above described without great hazard to itself and to the parties themselves.

WHEREFORE, the United States of America respectfully prays this Court

(1) To adjudge and declare the validity of the treaties and international conventions, compacts, laws, contracts and federal documents to which reference has been made

throughout this Petition and the pleadings of the parties;

(2) To interpret, construe, and resolve the conflicts which have arisen among the parties to this proceeding in connection with the laws, contracts, and documents referred to above;

(3) To quiet the title of the United States of America in and to each and every right to the use of water claimed and exercised by it, all as asserted in this Petition, including but not limited to those of its Indian wards, against the adverse claims of the State of Arizona and the above-named defendants.

And that the United States of America have such other and further relief as shall appear proper.

The United States also respectfully prays leave to amend this Petition of Intervention if that should hereafter become necessary or appropriate in the course of the proceedings herein.

HERBERT BROWNELL, JR.,
Attorney General.

DECEMBER 1953.

APPENDIXES

APPENDIX I

A. BOULDER CANYON PROJECT AND OTHER DEVELOPMENTS TO IMPOUND OR DIVERT THE WATERS OF THE COLORADO RIVER FROM THE MAIN CHANNEL OF THAT STREAM

Hoover Dam: This is the principal structure of the Lower Basin development impounding the waters of the Colorado River which comprise Lake Mead. It is situated in Black Canyon on the main channel of the Colorado River 325 miles above the Mexican border. The middle channel of the river at the site in question is the common boundary between the States of Nevada and Arizona.

This is the world's highest dam: a concrete arch, gravity type structure having a height of 726.4 feet and a hydraulic height of 575.8 feet. There have been constructed in connection with it two side-channel spillways with a capacity of 400,000 cubic feet of water per second of time.[1] The outlet works have a capacity of 91,000 c. f. s. The power plant discharge (17 turbines) is 30,560 c. f. s. The rating of the generators presently installed, including two small station-service units, is 1,249,800 kw.; ultimately the generator

[1] *Second foot:* A unit of measure of the rate of stream flow. It is the flow of one cubic foot (7.48 gallons) of water passing a given point per second of time; hereafter referred to as c. f. s.

rating installation will be 1,354,300 kw. Total storage capacity of Lake Mead is 32,359,000 acre-feet;[2] at elevation 1229, the maximum surface area is 162,700 acres.

Lake Mead has a maximum length of 115 miles and a maximum width of 8 miles.

Construction was initiated on Hoover Dam September 17, 1930 and water was first impounded on February 1, 1935. The first power was generated on September 11, 1936.

Water is pumped from Lake Mead to Boulder City and Henderson for municipal and industrial purposes; the average diversion is approximately 10,000 acre-feet annually.

Title to Hoover Dam is in the United States, and it is operated and maintained by the Department of the Interior.

Davis Dam: This structure is located 67 miles below Hoover Dam on the Main Colorado River and is directly west of Kingman, Arizona. The middle of the channel at the site of this structure is the common boundary between the States of Arizona and Nevada. This dam implements the regulation of the river by Hoover Dam. By express provision of the Treaty with the United Mexican States (Treaty Executive A, 78th Cong., 2d sess.; Protocol Executive A, 78th Cong., 2d sess. (59 Stat. 1219)), the United States of America was required to build Davis Dam to effect the regulation of the river provided for in the Treaty. Title to Davis Dam is in the United

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[2] *Acre-foot:* A unit of measure of volume. It is equivalent to the quantity of water that will cover 1 acre (43,560 square feet) 1 foot deep.

States and it is operated and maintained by the Department of the Interior.

The dam is an earth and rock fill structure with a bypass channel on the Arizona side of the spillway, outlets and power plant. The height of this structure is 200 feet and its hydraulic height is 138 feet. It has a spillway capacity of 192,000 c. f. s. with an outlet capacity of 60,000 c. f. s. The generating facilities are composed of five units with a total of 225,000 kw.

The Davis Reservoir has a total capacity of 1,820,000 acre-feet; at elevation 647 the surface area is 28,500 acres and the reservoir is 67 miles in length.

Construction was initiated on Davis Dam on July 29, 1942 and water was first impounded on January 17, 1950. The first power was generated on January 12, 1951.

Parker Dam: This structure is situated on the main channel of the Colorado River near Needles, California, 155 miles below Hoover Dam. The middle of the channel at the site of this dam is the common boundary line between the States of Arizona and California. It creates Havasu Lake and is the diversion point of the Colorado River Aqueduct of the Metropolitan Water District of Southern California. The waters impounded by Parker Dam are utilized to generate electricity.

Parker Dam is a concrete variable-radius arch structure with power plant intakes and penstocks through the abutments on the California end of the dam. The structural height of the dam is 320 feet and the hydraulic height is 75 feet. The overflow spillway is controlled by five 50 ft. x 50 ft. regulating gates. There has

been constructed in connection with it a power plant with four 30,000 kw. units for a total of 120,000 kw.

The total storage capacity of Havasu Lake is 717,000 acre-feet; at elevation 450 the surface area is 25,100 acres.

Construction of Parker Dam was initiated on October 1, 1934 and water was first impounded on June 29, 1938. The first power was generated on December 13, 1942.

The Metropolitan Water District of Southern California entered into a cooperative agreement for the construction of Parker Dam and the power plant. It receives a share of the power generated for use on the Colorado River Aqueduct and for resale. Title to Parker Dam is in the United States and it is operated by the Department of the Interior.

Water is pumped from Lake Havasu for municipal and industrial uses in the Southern California coastal areas.

Imperial Dam: This structure is situated on the main channel of the Colorado River 303 miles below Hoover Dam, and 18 miles above Yuma, Arizona. The middle of the channel at the site of the dam constitutes the common boundary between the States of Arizona and California. It is the diversion point for the All-American Canal and the Yuma Project (described in Appendix I B). It is likewise the point of diversion for the Gila Project in Arizona (described in Appendix I C).

Imperial Dam is a slab and buttress type concrete facility with a structural height of 31 feet at the overflow sections. The hydraulic height

is 23 feet. The overflow spillway has a capacity of 180,000 c. f. s. at elevation 191. Construction was initiated on Imperial Dam on January 15, 1936 and water was first diverted to the Imperial Irrigation District by means of it on September 11, 1939.

Title to Imperial Dam is in the United States and it is operated and maintained by the Department of the Interior.

Laguna Dam: This structure is situated approximately 308 miles below Hoover Dam, on the main channel of the Colorado River, and approximately 13 miles upstream from the City of Yuma, Arizona. The middle of the channel at that point is the common boundary between the States of California and Arizona. It is a rock filled weir with concrete surface. Its structural height is 43 feet and its hydraulic height is 10 feet. It was originally the diversion dam for the Yuma Project. Title to Laguna Dam is in the United States and it is operated and maintained by the Department of the Interior.

Construction of Laguna Dam was initiated on July 19, 1905 and water was first diverted by means of it on March 14, 1910.

All-American Canal System: Pursuant to the Boulder Canyon Project Act and acts amendatory thereof and supplementary thereto, the United States of America undertook the construction of the All-American Canal. That canal has its headworks on the California end of the Imperial Dam, described above. The headworks discharge Colorado River water into a concrete lined channel approximately 360 feet in width, which is divided into four channels directing

water into the desilting basins. These basins are adjacent to the California abutment of the Imperial Dam and consist of six rectangular basins each about 270 ft. x 770 ft. with a water depth of 12.5 feet. Each basin has a designed capacity of 2,000 c. f. s. Plans provide for the construction of two additional basins as needed.

The inifial capacity of the All-American Canal is 15,155 c. f. s. The canal has a width of 232 feet at normal water surface; a bottom width of 160 feet and a depth of 21 feet. The initial capacity of the canal remains unchanged for a distance of 15 miles to Siphon Drop at which point 2,000 c. f. s. can be delivered to the Yuma Project (described in Appendix I B through the Siphon Drop Power Plant. From that point, the capacity of the All-American Canal is 13,155 c. f. s. which is maintained for approximately 6 miles to Pilot Knob. At that point, the water may be discharged into the Colorado River through the Pilot Knob Wasteway or eventually through the Pilot Knob Power Plant. From Pilot Knob, the All-American Canal has a capacity of 10,155 c. f. s. to a point 15 miles from Pilot Knob, known as Drop No. 1. At that point, the Coachella Canal takes out. From there the main canal of the All-American Canal continues west, parallel to the common boundary between the United States of America and Mexico, for a distance of approximately 44 miles and reducing in capacity from 7,655 c. f. s. to 2,655 c. f. s.

Coachella Canal: From the above-mentioned takeout at Drop No. 1 of the All-American Canal, the Coachella Canal proceeds in a northwesterly direction. At the takeout, the Coachella Canal

has an initial capacity of 2,500 c. f. s. From the first turnout on the Coachella Valley County Water District, it has a capacity of 1,300 c. f. s. which is gradually reduced to its terminal point. The total length of the Coachella Canal is 123 miles. The canal is operated and maintained by the Coachella Valley County Water District.

Imperial Irrigation District alleges there are 900,000 acres of land within its boundaries and that it is committed to include an additional 90,000 acres. (Answer of Defendants to Bill of Complaint, page 47, paragraph 44 (c).) The total irrigable acreage which may be served by the Coachella Canal is 78,530 acres and the Coachella Valley County Water District asserts that within its boundaries there are 278,000 acres. (Answer of Defendants to Bill of Complaint, page 48, paragraph 44 (d).) In the year 1951, there were actually irrigated within the Imperial Irrigation District boundaries approximately 425,000 acres of land. In that same year, there were irrigated within the Coachella Valley County Water District 33,489 acres.

Construction of the All-American Canal was commenced in August 1934, and water was first delivered through the All-American Canal to the Imperial Irrigation District on October 13, 1940. Construction of the Coachella Main Canal was started in 1938.

The Colorado River Aqueduct: This structure diverts water impounded at Hoover Dam and at Parker Dam through headworks situated at the latter structure. The Aqueduct is 242 miles long; will have a maximum carrying capacity of 1,605 c. f. s. and is designed to carry all of the Colorado River water to which the Metropolitan Water

District of Southern California, the City of San Diego and the San Diego County Water Authority are entitled to receive under their contracts with the United States of America (i. e. 1,212,000 acre-feet annually). The City of San Diego and the San Diego County Water Authority receive the Colorado River water to which they are entitled under their contracts by means of the San Diego Aqueduct, which takes out of the Colorado River Aqueduct.

The Colorado River Aqueduct was financed and constructed entirely by the Metropolitan Water District of Southern California. Title to the aqueduct is in the Water District which operates and maintains it. However, the San Diego Aqueduct now built and the Second Barrel of that Aqueduct which is now being built, were financed and constructed entirely by the United States of America, and title is in the United States, which operates and maintains those aqueducts.

Palo Verde Weir: The United States of America delivers water to the Palo Verde Irrigation District pursuant to its contract with that District (Appendix IV D) at the Palo Verde Weir situated approximately 212 miles below Hoover Dam. Situated within the service area of the Palo Verde Irrigation District are 102,000 acres, of which 62,800 acres were irrigated in 1952. The weir was constructed and is operated and maintained by the United States of America which retains title to the structure.

B. DESCRIPTION OF YUMA PROJECT

There are 53,610 irrigable acres of land in the Yuma Project in the State of Arizona, of which

45,728 were irrigated with Colorado River water in the year 1951. Situated within the Yuma Project in the State of California are 15,124 irrigable acres, of which 9,305 acres were irrigated with Colorado River water in the year 1951.

Colorado River water for the Yuma Project is diverted through the All-American Canal. For that land situated in the State of California, turnouts have been constructed in the All-American Canal. The lands of the Yuma Project situated in the State of Arizona receive Colorado River water through the All-American Canal by means of a turnout from that structure at a point approximately 15 miles from the point of diversion, which is known as Siphon Drop. (See the description of the All-American Canal in Appendix I A.) There, 2,000 c. f. s. of water are diverted through the Siphon Drop Power Plant and approximately 800 c. f. s. are thence taken by siphon under the Colorado River for use in Arizona.

C. DESCRIPTION OF GILA PROJECT

The Gila Gravity Main Canal, with its headworks on the Arizona side of the Imperial Dam, described in Appendix I A, has an initial carrying capacity of 2,200 c. f. s. At about Mile 15 in the canal, the water is carried under the Gila River channel by siphon. On the south side of the river at approximately Mile 15 is situated the turnout for the Wellton-Mohawk Canal which has an initial capacity of 1,300 c. f. s. At Mile 18 is the terminal point of the Wellton-Mohawk Canal and the headworks of the Mohawk Canal which has an initial capacity of 900 c. f. s. The

Wellton Canal takes out of the Wellton-Mohawk Canal at approximately Mile 18; that structure has an initial capacity of 500 c. f. s. and a length of approximately 15 miles.

Respecting the size of the Gila Project, reference is made to the pertinent excerpt from the Act of July 30, 1947, Public Law No. 272, 80th Cong., 1st Sess., in paragraph XXIII of the Petition.

The Yuma Auxiliary Project, situated in the State of Arizona, comprised of approximately 3,000 acres of land, is served by the Gila Project works. (Act of June 13, 1949 (63 Stat. 172).)

D. DESCRIPTION OF SALT RIVER PROJECT

PRINCIPAL STRUCTURES

Roosevelt Dam: This structure is situated on the Salt River 30 miles northwest of Globe, Arizona. It is a rubble masonry, arch gravity type dam with a structural height of 280 feet and a hydraulic height of 225 feet. The overflow spillways at both abutments have a capacity of 150,000 c. f. s. At the toe of the dam there is a 7-unit power plant with a generating capacity of 15,400 kw.

The Roosevelt Reservoir impounds 1,398,430 acre-feet of water which is utilized to irrigate the Salt River Project.

Construction was initiated on Roosevelt Dam in March 1904 and water was first impounded in May 1909. The first power was generated on August 1, 1909.

Bartlett Dam: This structure is situated on the Verde River 36 miles northeast of Phoenix, Ari-

zona. It is a concrete multiple arch type dam with a structural height of 287 feet and a hydraulic height of 188 feet. It has an open channel spillway with a capacity of 175,000 c. f. s.

The reservoir has a maximum storage capacity of 179,480 acre-feet. The waters impounded by this reservoir are utilized to irrigate lands within the Salt River Project.

Construction was initiated on Bartlett Dam on August 12, 1936 and water was first impounded on February 5, 1939.

Horse Mesa Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on the Salt River 43 miles northeast of Phoenix, Arizona. Title to the structure is in the United States of America. It is a concrete variable-radius arch type dam with a structural height of 300 feet and a hydraulic height of 266 feet. Over fall spillways at both abutments have a capacity of 150,000 c. f. s. Situated at the toe of the dam is a power plant with a capacity of 30,000 kw.

The capacity of the reservoir is 245,138 acre-feet and the waters are utilized to irrigate the Salt River Project.

Construction was initiated on Horse Mesa Dam in August 1924 and water was first impounded on May 27, 1927. The first power was generated in April 1927.

Mormon Flat Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on the Salt River 37 miles northeast of Phoenix, Arizona. Title to this structure is in the United States of America. It is a concrete variable-radius arch type dam with a

structural height of 224 feet and a hydraulic height of 142 feet. It has an open channel spillway with a capacity of 150,000 c. f. s. Situated at the toe of the dam is a power plant with a generating capacity of 7,000 kw.

The capacity of the reservoir is 57,852 acre-feet and the waters impounded in this structure are utilized to irrigate the Salt River Project.

Construction was initiated on Mormon Flat Dam in February 1923 and water was first impounded on January 13, 1925. The first power was generated on May 19, 1926.

Stewart Mountain Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on the Salt River 29 miles northeast of Phoenix, Arizona. Title to this structure is in the United States of America. It is a concrete variable-radius arch type dam with gravity abutments with a structural height of 207 feet and a hydraulic height of 116 feet. It has an open channel spillway with a capacity of 150,000 c. f. s. Situated at the toe of the dam is a power plant with a capacity of 10,400 kw.

The capacity of the reservoir is 69,765 acre-feet and the waters impounded in this reservoir are utilized to irrigate the Salt River Project.

Construction was initiated on Stewart Mountain Dam on October 1, 1928 and water was first impounded on February 22, 1930. The first power was generated on March 8, 1930.

Cave Creek Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on Cave Creek, a tributary of the Salt River, 20 miles north of

Phoenix, Arizona. Title to this structure is in the United States of America. It is a concrete multiple arch dam with a structural height of 109 feet and a hydraulic height of 57 feet.

The capacity of the reservoir is 11,000 acre-feet and the waters impounded in this reservoir primarily for flood control are utilized to irrigate the Salt River Project.

Construction was initiated on Cave Creek Dam on February 16, 1922 and water was first impounded on March 4, 1923.

Horseshoe Dam: This structure, which was constructed by the Phelps-Dodge Corporation with Federal funds, is situated on the Verde River 55 miles northeast of Phoenix, Arizona. Title to the structure is in the United States of America. It is an earth and rock fill type dam, with a structural height of 194 feet and a hydraulic height of 145 feet. The spillway has a capacity of 250,000 c. f. s.

The capacity of the reservoir is 67,900 acre-feet. The waters impounded in this reservoir are utilized to irrigate the Salt River Project and also for municipal purposes by the City of Phoenix, Arizona.

Construction was initiated on Horseshoe Dam on November 30, 1943, and water was first impounded on November 16, 1945.

Granite Reef Diversion Dam: This structure is located on the Salt River 22 miles east of Phoenix, Arizona. It is a concrete weir and has a structural height of 29 feet and a hydraulic height of 18 feet.

Diversion Structures and Ditches—Salt River Project: The Arizona Canal serving part of the

Salt River Project north of the Salt River has its headworks at the north end of the above described Granite Reef Dam. It has an initial carrying capacity of 2,000 c. f. s. The Grand Canal which takes out of the Arizona Canal likewise serves an area of the project in question lying north of the Salt River.

The Salt River Project situated south of the Salt River is served by the South Canal, Eastern Canal, Consolidated Canal, Tempe Canal and Western Canal.

The headworks of the South Canal are situated on the south end of the Granite Reef Dam and the canal has an initial carrying capacity of 1,600 c. f. s.

In the year 1951, there were irrigated 214,000 acres of land within the Salt River Project, which has an ultimate maximum irrigable acreage of approximately 243,000 acres.

Appendix II

A. CLAIMS FOR THE INDIANS AND INDIAN TRIBES IN THE LOWER BASIN OF THE COLORADO RIVER IN THE STATES OF ARIZONA AND CALIFORNIA

Project or Reservation	Source of Water Supply	Annual Diversions (Acre Feet)	
		Present	Ultimate
MAIN STREAM, COLORADO RIVER, ARIZONA			
Colorado River Reservation			
Bottom Lands	Colorado River	195,600	660,000
Mesa Lands	do	0	72,000
Cocopah Reservation	do	600	3,100
Fort Mohave Reservation	do	0	55,000
Yuma Homesteads	do	2,450	2,350
Sub-Total, Main Stream, Arizona.		198,650	733,450

Project or Reservation	Source of Water Supply	Annual Diversions (Acre Feet)	
		Present	Ultimate
GILA RIVER BASIN, ARIZONA			
Ak Chin Reservation	Santa Cruz River	1,000	3,000
Camp Verde	Verde River	2,100	2,100
Fort McDowell Reservation	do	3,000	8,400
Fort Apache	White, Black and Cibique Rivers	11,500	30,000
Salt River Reservation	Salt and Verde Rivers	39,200	40,000
San Carlos Project	Gila River	370,000	603,300
Gila River Reservation (Non-Project)	Gila and Salt Rivers	25,570	27,000
San Carlos Reservation	Gila and San Carlos Rivers	6,000	9,000
San Xavier Reservation	Santa Cruz River	8,200	17,000
Sub-Total, Gila River Basin, Arizona		467,170	739,800
LITTLE COLORADO RIVER BASIN, ARIZONA			
Navajo Reservation (Small units)	Streams and washes	29,400	51,950
Winslow Project (Navajo Reservation)	Little Colorado		25,000
Hopi Reservation	do	3,300	3,600
Sub-Total, Little Colorado River, Arizona		32,700	80,550
MINOR TRIBUTARIES			
Hualapai Reservation	Big Sandy River	350	850
Havasupai Reservation	Cataract Creek	1,050	1,200
Kaibab Reservation	Spring	300	400
Sub-Total Minor Tributaries		1,650	2,450
MAIN STREAM, COLORADO RIVER, CALIFORNIA			
Colorado River Reservation	Colorado River	0	42,000
Fort Yuma Reservation	do	47,000	47,000
Coachella Valley Reservation	do	0	72,000
Fort Mohave Reservation	do	0	26,000
Chemehuevi Reservation	do	0	6,000
Total, Main Stream, California		47,000	191,000
Total—Arizona and California		747,179	1,747,250

Headgate Rock Dam: This structure is situated below Hoover Dam a distance of 169 miles. It was constructed by the United States which has title and operates and maintains its through the Department of the Interior, Bureau of Indian Affairs.

Water is diverted for use on the Colorado River Indian Reservation.

Coolidge Dam: This structure is situated on the Gila River 21 miles southeast of Globe, Arizona. Title resides in the United States of America. It is a reinforced concrete multiple dome structure rising 250 feet above the stream bed. Water was first impounded in the year 1928. Coolidge Dam creates a reservoir with a capacity of 1,285,000 acre-feet; with a generating capacity of 12,500 kw. The stored waters irrigate approximately 50,000 acres on the Gila River Indian Reservation and 50,000 acres of privately owned lands immediately adjacent to the Indian Reservation.

APPENDIX III

CLAIMS FOR FISH AND WILDLIFE PROJECTS

	Acre-feet annually
Havasu Lake National Wildlife Refuge situated on the main channel of the Colorado River	35,000
The Imperial National Wildlife Refuge on the main channel of the Colorado River	20,000
For wildlife management and conservation in Cibola Valley on the main channel of the Colorado River	15,000
Salton Sea Wildlife Refuge	6,000

APPENDIX IV

LIST OF CONTRACTS FOR THE DELIVERY OF WATER IMPOUNDED BY HOOVER DAM

A. Contract dated February 9, 1944, between the United States of America and the State of Arizona—Exhibit C of the Bill of Complaint of the State of Arizona.

B. Contract dated March 30, 1942, between the United States of America and the State of Nevada. Appendix VI A of this Petition.

C. Contract dated March 30, 1942, as amended by the contract of January 3, 1944, between the United States of America and the State of Nevada. Appendix VI B of this Petition.

D. Contract dated February 7, 1933, between the United States of America and the Palo Verde Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 11.

E. Contract dated October 23, 1918, between the United States of America and the Imperial Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 12.

F. Contract dated December 1, 1932, between the United States of America and the Imperial Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 13.

G. Contract dated March 4, 1952, between the United States of America and the Imperial Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 18.

H. Contract dated February 14, 1934, between the Imperial Irrigation District and the Coachella Valley County Water District—Appendixes to the Answer of Defendants, Appendix No. 14.

I. Contract dated October 15, 1934, between the United States of America and the Coachella Valley County Water District—Appendixes to the Answer of Defendants, Appendix No. 16.

J. Contract dated December 22, 1947, between the United States of America and the Coachella Valley County Water District—Appendixes to the Answer of Defendants, Appendix No. 17.

K. Contract dated April 24, 1930, between the United States of America and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 19.

L. Contract dated April 24, 1930, as amended and supplemented by the contract dated September 28, 1931, between the United States of America and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 21.

M. Contract dated February 15, 1933, between the United States of America and the City of San Diego—Appendixes to the Answer of Defendants, Appendix No. 23.

N. Contract dated February 15, 1933, as amended by the contract dated October 4, 1946, between the United States of America, the City of San Diego, the San Diego County Water Authority, and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 24.

O. Contract dated March 14, 1947, between the City of San Diego and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 26.

P. Contract dated February 10, 1933, between the United States of America and the Metropolitan Water District of Southern California for the construction and operation of Parker Dam—Appendixes to the Answer of Defendants, Appendix No. 22.

Q. Contract dated October 2, 1934, between the United States of America and the City of San Diego—Appendixes to the Answer of Defendants, Appendix No. 15.

R. Contract dated October 17, 1945, between the United States of America and the City of San Diego for aqueduct construction—Appendixes of Defendants, Appendix No. 25.

S. Contract dated April 1, 1952, between the United States of America and the San Diego County Water Authority for construction of second "barrel"—Appendixes to the Answer of Defendants, Appendix No. 27.

T. Contract dated March 4, 1952, between the United States of America and the Welton-Mohawk Irrigation and Drainage District.

APPENDIX V

TABULATION OF SOURCES OF ELECTRICITY AND THOSE HOLDING CONTRACTS FOR ITS PURCHASE

Hoover Dam

Private Utilities
- California Electric Power Company
- California Pacific Utilities Company
- Citizens Utility Company
- Southern California Edison Company

Municipalities
- City of Burbank
- City of Glendale
- City of Pasadena
- City of Los Angeles

State Governments
- Nevada

Public Authorities
- Metropolitan Water District

Federal Interdepartmental Sales

Parker-Davis System

Private Utilities
- Arizona Edison Company
- Central Arizona Light & Power Company
- Tucson Gas Electric Light & Power Company

State Government Utilities
- Gila Valley Power District
- Wellton Mohawk Operation Company
- Imperial Irrigation District
- Colorado River Commission of Nevada
- Arizona Power Authority
- Salt River Project Power District
- Yuma Irrigation District.

Federal Government Utilities
- Colorado River Indians
- San Carlos Indians
- Air Force
- Army

Residential and Domestic

Commercial and Industrial

Public Authorities

Federal Interdepartmental Sales

Yuma

Siphon Drop
Residential and Domestic
Commercial and Industrial
Public Authorities
Federal Interdepartmental Sales

APPENDIX VI

A. UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Arizona-California-Nevada

Contract for Delivery of Water

1. THIS CONTRACT, made this 30th day of March, nineteen hundred forty-two, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA (hereinafter referred to as "United States"), acting for this purpose by Harold L. Ickes, Secretary of the Interior (hereinafter referred to as the "Secretary"), and the STATE OF NEVADA, a body politic and corporate, and its Colorado River Commission (said Commission acting in the name of the State, but as principal in its own behalf as well as in behalf of the

State; the term State as used in this contract being deemed to be both the State of Nevada and its Colorado River Commission), acting in pursuance of an act of the Legislature of the State of Nevada, entitled "An Act creating a commission to be known as the Colorado river commission of Nevada, defining its powers and duties, and making an appropriation for the expenses thereof, and repealing all acts and parts of acts in conflict with this act", approved March 20, 1935 (Chapter 71, Stats. of Nevada, 1935);

WITNESSETH THAT:

Explanatory Recitals

2. WHEREAS, for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and in pursuance of the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Boulder Dam and incidental works, creating thereby a reservoir designated Lake Mead; and

3. WHEREAS, the State is desirous of entering into a contract for the delivery to it of water from Lake Mead:

4. NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by the United States

5. (a) Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water as may be necessary to supply the State a total quantity not to exceed One Hundred Thousand (100,000) acre-feet each calendar year. The right of the State to contract for the delivery to it from storage in Lake Mead of additional water is not limited by this contract. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power.

(b) Water agreed to be delivered to the State hereunder shall be delivered continuously as far as reasonable diligence will permit, but the United States shall not be obligated to deliver water to the State when for any reason, as conclusively but not arbitrarily determined by the Secretary, such delivery would interfere with the use of Boulder Dam or Lake Mead for river regulation, improvement of navigation, flood control, and/or satisfaction of perfected rights, in or to the waters of the Colorado River, or its tributaries, in

pursuance of Article VIII of the Colorado River Compact.

(c) The United States reserves the right, for the purpose of investigation, inspection, maintenance, repairs and replacement or installation of equipment or machinery at Boulder Dam, to discontinue temporarily or reduce the amount of water to be delivered hereunder, but so far as feasible the United States will give the State reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur.

(d) This contract is for permanent service, and is made subject to the express condition that the State, upon request of the Secretary, shall submit in writing prior to January 1st of any year, an estimate of the amount of water to be required under this contract for the succeeding calendar year.

Receipt of Water by the State

6. The State shall receive the water to be diverted by or delivered to it by the United States under the terms hereof at the point or points of delivery to be hereafter designated as stated in the next preceding article hereof, and shall perform all acts required by law or custom in order to maintain control over such water and to secure and maintain its lawful use and proper diversion from Lake Mead. The diversion and conveyance of such water to places of use shall be without expense to the United States.

Measurement of Water

7. The water to be delivered to the State hereunder shall be measured at the point or points of diversion from Lake Mead, or at such point or points in any works used by the State to convey water from Lake Mead to its place or places of use as shall be satisfactory to the Secretary, and by such measuring and controlling devices or such automatic gauges or otherwise as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gauges, shall be furnished, installed, and maintained in manner satisfactory to the Secretary, by and at the expense of the State, but they shall be and remain at all times under the complete control of the United States. The State's authorized representative shall be allowed access at all times to said measuring and controlling devices or automatic gauges.

Record of Water Diverted

8. The State shall make full and complete written monthly reports as directed by the Secretary on forms to be supplied by the United States of all water delivered to or diverted by the State from Lake Mead. Such reports shall be made by the fifth day of the month immediately succeeding the month in which the water is diverted.

Charge for Delivery of Water

9. A charge of fifty cents ($0.50) per acre-foot shall be made for the diversion by or delivery of water to the State hereunder during the Boulder Dam cost-repayment period, subject to reduction

by the Secretary in the amount of the charge if studies show to his satisfaction that the charge is too high. Thereafter, charges shall be on such basis as may hereafter be prescribed by the Congress. Charges shall be made against the State only for the number of acre-feet of water actually delivered to or diverted by it from Lake Mead.

Billing and Payments

10. The State shall pay monthly for all water delivered to it hereunder, or diverted by it from Lake Mead, in accordance with the charge in Article nine (9) hereof established. The United States will submit bills to the State by the tenth day of each month immediately following the month during which the water is delivered or diverted and payments shall be due on the first day of the month immediately succeeding. If such charges are not paid when due, an interest charge of one per centum (1%) of the amount unpaid shall be added thereto as liquidated damages, and, thereafter, as further liquidated damages, an additional interest charge of one per centum (1%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest is paid in full.

Refusal of Water in Case of Default

11. The United States reserves the right to refuse to deliver water to the State, or to permit water to be diverted by the State from Lake Mead, in the event of default for a period of more than twelve (12) months in any payment due or to

become due to the United States under this contract.

Inspection by the United States

12. The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the State for the purpose of inspection, repairs, and maintenance of works of the United States, and for all other proper purposes. In each contract made by the State for the redelivery of any part of the water agreed to be delivered to the State hereunder, it shall be provided, for the use and benefit of the United States, that the authorized representatives of the United States shall at all times have access to measuring and controlling devices, or automatic gauges, over the lands and rights of way of the contractee. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the State relating to the diversion and distribution of water delivered to or diverted by the State from Lake Mead with the right at any time during office hours to make copies of or from the same.

Rules and Regulations

13. There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised, and/or extended from time to time after notice to the State and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of

this contract, or amendments hereof, or to protect the interests of the United States. The State hereby agrees that in the operation and maintenance of its diversion works and conduits, all such rules and regulations will be fully adhered to.

Agreement Subject to Colorado River Compact

14. This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to an Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which compact was approved in section 13 (a) of the Boulder Canyon Project Act.

Priority of Claims of the United States

15. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contract Contingent Upon Appropriations

16. This contract is subject to appropriations being made by Congress from time to time of money sufficient to provide for the doing and performance of all things on the part of the United States to be done and performed under the terms hereof, and to there being sufficient money avail-

able in the Colorado River Dam fund for such purposes. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient money not being so appropriated, or on account of there not being sufficient money in the Colorado River Dam fund for such purposes.

Effect of Waiver of Breach of Contract

17. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other subsequent breach of any provision hereof.

Remedies Under Contract Not Exclusive

18. Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States or the State of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

Transfer of Interest in Contract

19. No voluntary transfer of this contract, or of the rights of the State hereunder, shall b made without the written approval of the Secretary; and any successor or assign of the rights of the State, whether by voluntary transfer, judicial sale, trustee's sale, or otherwise, shall be subject

to all the conditions of the Boulder Canyon Project Act, and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original contractor hereunder; provided, that the execution of a mortgage or trust deed, or judicial or trustee's sale made thereunder, shall not be deemed a voluntary transfer within the meaning of this Article.

Notices

20. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Director of Power, United States Bureau of Reclamation, Boulder City, Nevada, except where, by the terms hereof, the same is to be given or made to or upon the Secretary, in which event it shall be delivered, or mailed postage prepaid, to the Secretary, at Washington, D. C.

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the State shall be delivered, or mailed postage prepaid, to the Secretary of the Colorado River Commission of Nevada, Carson City, Nevada.

(c) The designation of any person specified in this article or in any such request for notice, or the address of any such person, may be changed

at any time by notice given in the same manner as provided in this article for other notices.

Officials Not To Benefit

21. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Uncontrollable Forces

22. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purposes of this contract, to mean any cause beyond the control of the party affected, including but not limited to inadequacy of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By ABE FORTAS,
Acting Secretary of the Interior.

STATE OF NEVADA, acting by and through its Colorado River Commission,
By E. P. CARVILLE, *Chairman.*
Attest:
ALFRED MERRITT SMITH,
Secretary.

COLORADO RIVER COMMISSION OF NEVADA,
By E. P. CARVILLE, *Chairman.* [SEAL]
Attest:
ALFRED MERRITT SMITH,
Secretary

Ratified and approved this 21st day of April 1943.

E. P. CARVILLE,
Governor of the State of Nevada.

Attest:
MALCOLM MCEACHIN [SEAL]
Secretary of State.

Approved as to form:

ALAN BIBLE.
Attorney-General of Nevada.

APPENDIX VI

B. UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Arizona-California-Nevada

Supplemental Contract for Delivery of Water

1. THIS SUPPLEMENTAL CONTRACT, made this 3rd day of January, nineteen hundred forty-four, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA (hereinafter referred to as "United States"), acting for this purpose by Harold L. Ickes, Secretary of the Interior (hereinafter styled "Secretary"), and STATE OF NEVADA, a body politic and corporate, and its Colorado River Commission (said Commission acting in the name of the State, but as principal in its own behalf as well as in behalf of the State; the term State as used in this supplemental contract being deemed to be both the State of Nevada and its Colorado River Commission), acting in pursuance of an act of the Legislature of the State of Nevada, entitled "An Act creating a commission to be known as the Colorado river commission of Nevada, defining its powers and

duties, and making an appropriation for the expenses thereof, and repealing all acts and parts of acts in conflict with this act," approved March 20, 1935 (Chapter 71, Stats. of Nevada, 1935);

WITNESSETH:

Explanatory Recitals

2. WHEREAS, under date of March 30, 1942, the parties hereto entered into a contract providing, among other things, for the delivery of water to the State each year, from storage in Lake Mead, subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, so much water as may be necessary to supply the State a total quantity not to exceed One Hundred Thousand (100,000) acre-feet each calendar year, and it is now desired to amend said contract so as to provide for the delivery each calendar year of not to exceed an additional 200,000 acre-feet of water to the State;

3. NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by the United States

4. Article 5 (a) of the aforesaid contract of date March 30, 1942, is hereby amended to read as follows:

"Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or

points to be selected by the State and approved by the Secretary, so much water, including all other waters diverted for use within the State of Nevada from the Colorado River system, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power."

Modification of Prior Contract

5. Except as expressly herein amended, the aforesaid contract of date March 30, 1942, shall be and remain in full force and effect.

Effective Date of Supplemental Contract

6. This supplemental contract shall be of full force and effect immediately upon its execution for and on behalf of the United States.

Officials Not To Benefit

7. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this supplemental contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By HAROLD L. ICKES, *Secretary of the Interior.*
STATE OF NEVADA, acting by and through its Colorado River Commission,
By E. P. CARVILLE, *Chairman.*
Attest:
ALFRED MERRITT SMITH,
Secretary.
COLORADO RIVER COMMISSION OF NEVADA,
By E. P. CARVILLE, *Chairman.*
Attest:
ALFRED MERRITT SMITH,
Secretary.

Ratified and approved this 3rd day of January 1944.

E. P. CARVILLE,
Governor of the State of Nevada.

Attest:
MALCOLM MCEACHIN,
Secretary of State,
By MURIEL LITTLEFIELD,
Deputy.

Approved as to form:
ALAN BIBLE,
Attorney General of Nevada.

APPENDIX VII

A—The Colorado River Compact (Arizona's Bill of Complaint, Exhibit A).

B—The Boulder Canyon Project Act (Defendants' Appendixes to the Answer, Appendix No. 2).

C—The California Limitation Act (Defendants' Appendixes to the Answer, Appendix No. 3).

D—The Seven Party Priority Water Agreement (Arizona's Bill of Complaint, Exhibit B).

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IN THE

Supreme Court of the United States

NO. 10, ORIGINAL.

October Term, 1953

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

UNITED STATES OF AMERICA, INTERVENER.

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission
BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission
PERRY M. LING
Special Counsel,
Arizona Interstate Stream Commission
ROSS F. JONES
Attorney General of Arizona
HOWARD F. THOMPSON
Special Assistant to the Attorney General of Arizona

RESPONSE OF COMPLAINANT THE STATE OF ARIZONA TO MOTION OF STATE OF NEVADA FOR LEAVE TO INTERVENE.

IN THE

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NO. 10, ORIGINAL

October Term, 1953

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

UNITED STATES OF AMERICA, INTERVENER.

RESPONSE OF COMPLAINANT THE STATE OF ARIZONA TO MOTION OF STATE OF NEVADA FOR LEAVE TO INTERVENE.

COMES Now the Complainant above named and in response to the motion of the State of Nevada for leave to intervene says that it has no objection to the intervention in this case by the State of Nevada when and if the State of Nevada tenders or files a Petition of Intervention setting forth facts sufficient to constitute a claim or cause of action against the Plaintiff, the Defendants, or any of them, or the Intervener, the United States of America. Complainant further says that the Petition of Intervention tendered by the State of Nevada does not state facts sufficient to constitute a claim or cause of action against any of the present parties of this case because:

1.

None of the parties to this cause has questioned the allocation to the State of Nevada of the beneficial consumptive use of 300,000 acre feet of Colorado River System water as provided by the January 3, 1944 amendment of the March 30, 1942 contract between the United States of America and the State of Nevada.

2.

Section 5 of the Boulder Canyon Project Act (45 Stat. 1057) authorizes the Secretary of the Interior to contract for the storage of water in and delivery of water from the reservoir created by the dam authorized for construction by said Act and provides that:

"No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

3.

Paragraph 4 of the January 3, 1944 contract between the United States of America and the State of Nevada provides:

"Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, *so much water, including all other waters diverted for use within the State of Nevada from the Colorado River System, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year.* Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power." (emphasis supplied)

4.

The State of Nevada in its Motion for Leave to Intervene and in its tendered Petition of Intervention fails to allege that (a) it has or can obtain any contract from the United States of America for any greater quantity of water than that referred to in the aforementioned January 3, 1944 contract, and (b) that there is physically available for use within the State of Nevada any quantity of Colorado River System water, other than that possibly available from Lake Mead Storage, in excess of the 300,000 acre feet referred to in said January 3, 1944 contract.

5.

The State of Nevada fails to allege that it has any fixed, definite plans for the use, within any reasonable time, of any greater quantity of Colorado River System water than that referred to in the said January 3, 1944 contract.

WHEREFORE, the Complainant asks that the Motion by the State of Nevada for leave to file a Petition of Intervention be denied.

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission

PERRY M. LING
Special Counsel,
Arizona Interstate Stream Commission

ROSS F. JONES
Attorney General of Arizona

HOWARD F. THOMPSON
Special Assistant to the Attorney General of Arizona

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JOHN H. MOEUR
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Arizona Interstate Stream Commission
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Special Counsel,
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ROSS F. JONES
Attorney General of Arizona
HOWARD F. THOMPSON
Special Assistant Attorney General of Arizona

ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA.

IN THE

Supreme Court of the United States

October Term, 1953

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STATE OF ARIZONA

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v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

UNITED STATES OF AMERICA, INTERVENER.

ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA.

Comes now the State of Arizona, Complainant above named, and for its Answer to the Petition of Intervention of the United States of America says:

1.

Admits the allegations of Paragraphs I to VI, inclusive.

2.

Answering Paragraph VII, Complainant says that claims of rights to the use of Colorado River water existing prior to the adoption of the Colorado River Compact of 1922 are immaterial to a decision of the issues of

this case. Whatever rights any state or any water user of the Lower Basin may have had at any time to the use of the waters of the Colorado River System are subject to the terms of the Compact, the Project Act, and the California Limitation Act. Denies the other allegations of Paragraph VII except as such allegations conform to the facts set out in the Complaint and in the Complainant's Reply to the Defendant's Answer.*

3.

Admits the allegations of Paragraph VIII.

4.

Admits the allegations of Paragraph IX and in addition alleges that by Article III (d) of that Compact it is provided that the States of the Upper Division, i.e., Colorado, Utah, Wyoming and New Mexico will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series.

5.

Admits the allegations of Paragraphs X and XI.

6.

As to Paragraph XII admits that the United States asserts the interests therein specified. Alleges that the existence of such interests, or of any of them, does not permit or require the allocation to the United States of any quantity of water of the Colorado River. Admits that the claims asserted by the Complainant and by the Defendants are adverse. Alleges that the recognition of the claims asserted by the Complainant contitutes no hazard to the United States but to the

*Consistent with prior pleadings, the term: "Compact" refers to the Colorado River Compact of 1922. The term: "Project Act" refers to the Boulder Canyon Project Act (Act of Dec. 21, 1928). The term: "California Limitation Act" refers to that certain act of the California Legislature known as the Act of March 4, 1929, Chapter 16 of the 48th Session Statutes and Amendment to the California Codes 1929, Pages 38-39.

contrary constitutes a protection of the interests of the United States and is in accord with the legislative and administrative interpretation given by the United States to the various instruments constituting the law of the river.

7.

Admits the allegations of Paragraph XIII and alleges that the treaty therein referred to provides in its Article 10 (b) that the quantity of water allotted to Mexico shall be reduced "in the event of extraordinary drought or serious accident to the irrigation system in the United States."

8.

As to Paragraphs XIV to XVIII inclusive, Complainant admits that the projects there referred to have been constructed or are in the process of construction substantially as alleged in said paragraphs and in the appendices there referred to. Complainant also admits the existence of the contracts and agreements therein referred to. Alleges all of said projects, contracts and agreements are subject to and governed by the Compact, the Project Act, and the California Limitation Act and none of them can or do create any rights to the use of water in excess of the rights existing under and by virtue of the Compact, the Project Act, and the California Limitation Act. The impoundment, diversion, and use of water by any and all projects and facilities there referred to are governed, limited and controlled by the Compact, the Project Act and the California Limitation Act. The effect of these instruments and the rights to the use of water thereunder are as alleged in the Complaint and the Reply to the Answer of the Defendants.

9.

Admits the allegations of Paragraph XIX. Alleges that there are other contracts between the United States and Arizona entities covering the use of main stream water within the State of Arizona in addition

to the March 4, 1952 contract with the Wellton-Mohawk Irrigation and Drainage District. Said contracts are more specifically later referred to herein.

10.

As to Paragraphs XX and XXI Complainant refers to and by this reference incorporates herein its Paragraph 8 above.

11.

Admits the allegations of Paragraph XXII. Alleges that uses of main stream water within Arizona on the Yuma Project are covered by the following contracts:

Contract dated June 15, 1951, between the United States of America and the Yuma County Water Users Association.

Contract dated December 22, 1952, between the United States of America and the Unit B Irrigation and Drainage District.

12.

Admits the allegations of Paragraph XXIII. Alleges that the North Gila Valley Irrigation District, originally authorized as a part of the Yuma Project, and located in the North Gila Valley in Arizona, uses main stream water pursuant to a contract dated September 24, 1918, between the United States of America and the North Gila Valley Irrigation District. An amended and supplemental contract has been negotiated between the United States of America and North Gila Valley Irrigation District, but the required judicial confirmation of the validity of the contract has not yet been obtained.

13.

Admits the allegations of Paragraphs XXIV, XXV and XXVI.

14.

(a) As to Paragraph XXVII, Complainant admits the United States is the trustee or guardian for Indians

and Indian Tribes living within the Lower Basin of the Colorado River. Such Indians and Indian Tribes have existing rights to the beneficial use of water of the Colorado River and its tributaries in the Lower Basin. Alleges it is not necessary to determine in this case the extent of such rights. The relief sought by the parties does not injure or threaten to injure such existing rights. Potential rights to the use of water by Indians and Indian Tribes are and will be on the same basis as potential rights to the use of water by non-Indians. Admits that the United States claims for the benefit of the Indians and Indian Tribes rights to the use of water as set forth in said Paragraph XXVIII and in Appendix II-A of the Petition of Intervention. Alleges that the quantities of water referred to in said Appendix II-A are stated in terms of headgate diversions and not in terms of beneficial consumptive use. Denies that the present uses of water by Indians and Indian Tribes in the Lower Basin are as stated in Intervener's Appendix II-A. Alleges that such present uses of water by Indians and Indian Tribes in the Lower Basin in Arizona are as set forth in Appendix I hereto to which reference is hereby made. Alleges that claims for ultimate use of water are immaterial to the determination of the issues in this case. No decree may be entered herein allocating to the United States any specific quantities of water for Indian or any other uses. Complainant renews its offer to stipulate in accordance with the allegations of Paragraph 14 of its Reply to the Defendants' Answer.

(b) Uses of water from the Gila River and its tributaries by Indians and Indian Tribes are covered by court decrees and contracts binding upon the United States. Decrees covering the rights of the Indians to the use of such water have been entered in numerous cases in which the United States, as the Trustee or Guardian of the Indians and Indian Tribes, was a voluntary party. Such decrees, together with the title of the case in which they were rendered and the date of entry thereof, are set forth by title in Appendix II hereto. On behalf of the Indians and pursuant to speci-

fic acts of the Congress, the United States has entered into the water use contracts listed in Appendix III hereto.

(c) By reason of the acts of Congress referred to in the contracts listed in Appendix III, the execution of such contracts by the United States, the voluntary participation by the United States in the judicial proceedings wherein the decrees listed in Appendix II were entered, the long acquiescence in such contracts and decrees by the United States and the acceptance of the benefits arising from the use of water thereunder, the United States as Trustee and Guardian for the Indians and Indian Tribes, and the Indians and Indian Tribes, are now estopped and precluded from asserting any rights contrary thereto. The United States, by the abovementioned actions of its legislative and executive branches occurring over a long period of years, has made legislative and administrative interpretations of the rights of the Indians and Indian Tribes to the use of the waters of the Lower Basin of the Colorado River and is now bound by such legislative and administrative interpretations.

15.

As to Paragraphs XXVIII and XXIX, admits that the United States asserts the interests therein specified. Alleges that the relief sought by the Complainant will not interfere with or injure any uses of water by the United States for the purposes mentioned in said paragraphs.

16.

As to Paragraph XXX admits that the United States makes the claims there mentioned. Denies that any lawful claims of the United States are jeopardized by the relief sought by the Complainant. Admits that there is a pressing need for a decree of this Court determining and settling the controversies specifically referred to in Paragraph XXII of the Complaint.

17.

As to the allegations of Paragraph XXXI (a), admits the existence of the various instruments therein mentioned. Alleges that in addition to such instruments specifically mentioned the uses of the water in the Lower Basin are subject to the California Limitation Act. The effect of each and all of such instruments is as stated in the Complaint, the Reply to the Answer of the Defendants, and this Answer to the Petition of Intervention.

18.

As to the matters and things contained in Paragraphs XXXII to XXXVI inclusive Complainant admits that the issues therein mentioned are presented for determination and says that the allegations and contentions of the parties are as set out in Complaint, Answer, Reply and Rejoinder now filed in this case to which reference is hereby made. Alleges that the relief sought by Arizona will not injure any right of the United States.

19.

Answering Paragraph XXXVII, Complainant refers to and by this reference incorporates herein Paragraph 14 of this Answer. Alleges that rights to the use of water by Indians and Indian Tribes are subject to and affected by the Compact. Article VII of said Compact refers to and excepts from the effect of the Compact the "obligations" of the United States to Indian Tribes. It was not and is not the intent of the Compact to prefer Indian uses or to reserve water for Indian uses. The Petition of Intervention does not allege, and the Complainant does not know, what the obligations of the United States are to Indian Tribes. Denies that the relief sought by the Complainant adversely affects any rights of the Indians or Indian Tribes. Denies that any determination of the rights of the Indians and Indian Tribes in the Lower Basin to the use of any water of the Colorado River or its tributaries is necessary or material to a determination of the issues of this case.

20.

Answering Paragraph XXXIX, denies the allegations of said paragraph except as such allegations conform to the facts alleged or admitted by the Complainant.

21.

As to Intervener's Appendices I, II-B, IV and V, Complainant says that the statements therein contained have no material bearing on the issues tendered or proper for determination in this case. The rights of the parties and each of them to the use of the waters of the Colorado River System are subject to the availability thereof under the Compact, the Project Act, and the California Limitation Act. Such rights are neither enlarged nor diminished by the facts averred in the said Appendices. Insofar as the facts set out in said Appendices are different from the facts alleged in the Complaint, the Reply to the Defendants' Answer, and this Answer to the Petition of Intervention, the Complainant neither admits nor denies them but relies on its position that they are immaterial, irrelevant and incompetent to either prove or disprove any of the issues presented for determination in the case. Insofar as the conclusions of either fact or law set forth in said Appendices are concerned, the Complainant denies each and all of them except such as are specifically admitted in the Complaint, the Reply to the Defendants' Answer, and in this Answer to the Petition of Intervention.

22.

As to Intervener's Appendix II-A the Complainant refers to and by this reference incorporates herein its Paragraph 14 of this Answer to the Petition of Intervention and Appendices I, II and III.

23.

As to Intervener's Appendix III, Complainant says that it has no knowledge or information as to the claims therein mentioned and denies that said claims

or any of them have any materiality, relevancy or competency so far as the issues for determination in this case are concerned.

24.

As to Intervener's Appendices VI and VII, Complainant admits the execution and existence of the contracts therein referred to.

25.

Complainant denies each and every affirmative allegation of the Petition of Intervention not specifically admitted in this Answer.

WHEREFORE, Complainant prays as in its Complaint and Reply to the Answer of the Defendants.

JOHN H. MOEUR,
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER,
Assistant Counsel,
Arizona Interstate Stream Commission

PERRY M. LING,
Special Counsel,
Arizona Interstate Stream Commission

ROSS F. JONES,
Attorney General of Arizona

HOWARD F. THOMPSON,
Special Assistant to the Attorney General of Arizona

APPENDIX I

PRESENT USES BY INDIANS AND INDIAN TRIBES IN THE LOWER BASIN OF THE COLORADO RIVER IN THE STATE OF ARIZONA

Project or Reservation	*Source of Water Supply*	*Annual Diversions (Acre-Feet)*	*Estimated Depletion at Mainstream (Acre-Feet)*
Main Stream, Colorado River, Arizona			
Colorado River Reservation Bottom Lands	Colorado River	195,600	75,000
Cocopah & Yuma Reservations	Colorado River	3,050	1,500
Gila River Basin, Arizona			
Camp Verde & Ft. McDowell Reservations	Verde River	5,700	800
Fort Apache Reservation	White, Black & Cibique Rivers	11,500	1,500
Salt River Reservation	Salt & Verde Rivers	39,200	12,500
*San Carlos Project (Indian)	Gila River	111,000	45,000
Gila River Reservation	Gila & Salt Rivers	25,570	9,200
San Carlos Reservation	Gila & San Carlos Rivers	6,000	1,000
San Xavier Reservation	Santa Cruz River	8,200	800
Little Colorado River Basin, Arizona			
Navajo and Hopi Reservations	Streams and Washes & Little Colorado	32,700	2,000
Minor Tributaries			
Haulapai Reservation, Havasupai and Kaibab Reservations	Big Sandy River Cataract Creek and Spring	1,650	1,000
		440,170	150,300

*Average diversion 1930 to 1952 was 223,000 ac. ft. per year. Approximately 50% was delivered to Indian lands.

Water used on Ak Chin Reservation is produced from deep wells: not a part of water of Colorado River system.

APPENDIX II

Decrees covering the use of waters of the Gila River and its tributaries:

1. *United States of America as guardian of certain Indians* vs. *N. W. Haggard, et al,* District Court of the Third Judicial District of the Territory of Arizona, Docket #19, dated June 11, 1903.
2. *Patrick T. Hurley* vs. *Charles F. Abbott, et al,* United States of America, Intervener, in the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa, Docket #4564, dated May 1, 1910. (Commonly known as the Kent decree).
3. *Nels Benson* vs. *John Allison, et al,* in the Superior Court of Maricopa County, Arizona, Docket #7589 dated November 14, 1917.*
4. *The United States of America* vs. *Gila Valley Irrigation District, et al,* in the United States District Court for the District of Arizona, Docket # Globe Equity 59, dated June 29, 1935.

*This decree and the amendment thereto dated November 13, 1919, did not specifically deal with any Indian uses but did refer to and approve the Haggard decree.

APPENDIX III

Contracts by the United States of America covering certain Indian uses of waters of the Gila River and its tributaries:

1. Agreement between the United States of America and the Salt River Valley Water Users Association dated June 3, 1935 covering the rights of the Indians on the Salt River Indian Reservation to certain storage capacity behind Bartlett Dam on the Verde River.

2. Contract between the United States of America and Salt River Valley Water Users Association dated May 5, 1936 for pumping water to irrigate 1,080 acres of land by the Maricopa Indians on the Gila River Reservation.

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

Answer of California Defendants to Petition of Intervention on Behalf of the United States of America

and

Summary of the Controversy (Exhibit A)

(See List of Attorneys on Inside Cover)

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NORTHCUTT ELY,

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IN THE

Supreme Court of the United States

October Term, 1953.

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA.

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego, by their duly authorized attorneys, jointly answer the Petition of Intervention on behalf of the United States of America as follows:

Introduction.

1.

The Petition of Intervention of the United States declares that by reason of the issues stated in this cause, the United States is and will be in grave doubt as to its rights and duties in connection with projects and rights of the United States within the Colorado River Basin, until a determination of these issues is had by this Court. Through facts pleaded in this Answer, defendants allege that these uncertainties and doubts were not in evidence at the time of the enactment of the Boulder Canyon Project Act (1928) of the Statutory Compact between the United States and California (1929), and in the period 1930-1934 when the United States negotiated the contracts with the California defendants which made the present state of development on the lower Colorado River possible, nor on numerous occasions since that period, pointed out by defendants, on which the Congress and agencies of the United States have had cause to inquire into projects affecting this Basin.

The Petition shows that substantially all of the waters of the Colorado River System in controversy among Arizona, California (and now Nevada) are under the physical control of the United States, inasmuch as they are intercepted and impounded in reservoirs owned by the United States, both on the main stream and on the Gila River. Moreover, by far the greater part of the water supply of the Lower Basin flows to it from the

Upper Basin. Plans have been put forward to impound this water in the Upper Basin by dams, which would be built by the United States, capable of retaining several years flow of the river. Reports in furtherance of these plans have been submitted to the Congress by the Department of the Interior, and Congressional Committees are currently considering the merits of legislation which would put these plans into effect. As understood by defendants, the Petition asserts certain rights of the United States to the waters of the Colorado River System, not only as against complainant and defendants but as against the other States of the Colorado River Basin as well.

In this Answer defendants state their affirmative defenses against these federal claims, as well as their traverse of the Government's allegations. So far as possible, this is done by cross-reference to the defendants' Answer to Arizona's Bill of Complaint.

2.

Defendants refer to their "Appendixes to the Answer" to Arizona's Bill of Complaint, cite various of these Appendixes throughout this Answer, and incorporate these Appendixes by reference as a part of their present Answer to the Petition of Intervention on behalf of the United States of America, as though the same were here set out at length.

FIRST AFFIRMATIVE DEFENSE.

Defendants Have the Right to the Beneficial Consumptive Use in California of 5,362,000 Acre-feet Per Annum of Waters of the Colorado River System Under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact Between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto.

3.

The General Scope of the Boulder Canyon Project Act.

The Congress of the United States, by the terms of the Boulder Canyon Project Act (Appendix 2), hereinafter referred to as the "Project Act," undertook to impound and control the disposition of the water of the Colorado River, a navigable stream.

In general, this act:

(1) Authorized the construction of Hoover Dam and power plant (Sec. 1), but on condition (Sec. 4(b), par. 1) that the Secretary of the Interior provide for revenues, in advance of construction, by the sale of electric energy so as to liquidate the investment within fifty years. This was done by contracts with California entities, including the defendants City of Los Angeles and The Metropolitan Water District of Southern California, as hereinafter related.

(2) Authorized the construction of the All-American Canal (Sec. 1) from the Colorado River to Imperial and Coachella Valleys, but on condition (Sec. 4(b), par. 2) that the Secretary of the Interior first provide for revenues, in advance of construction, by repayment contracts under the reclamation law. Section 1 stipulated that no charge be made for the use, storage or delivery

of water in Imperial and Coachella Valleys, in recognition of the pre-existing rights of these areas in the waters of the Colorado River System. Contracts to repay the government's investment in the All-American Canal were made by defendants Imperial Irrigation District, Coachella Valley County Water District, and City of San Diego, as hereinafter alleged.

(3) Offered to California, upon certain conditions, a Statutory Compact (Sec. 4(a), par. 1), defining and limiting this State's rights to the waters of the Colorado River System, in terms of the quantities available, "for use in California." This was accepted by California, in the manner hereinafter described. A second paragraph of Section 4(a) authorized a compact among Arizona, California and Nevada, but no State accepted or ratified it.

(4) Authorized the Secretary of the Interior (Sec. 5) to enter into contracts for the storage and delivery of water at points to be agreed upon, on the river or All-American Canal, for permanent service, in conformity with the Colorado River Compact and the Statutory Compact between the United States and California, and directed that no person should have the use of stored water except by such contracts. Contracts pursuant to these provisions were made with defendants Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, and City of San Diego, as hereinafter alleged.

(5) Consented, on certain conditions, to the Colorado River Compact (Secs. 4(a), 13(a)), and subjected the rights of the United States and those claiming under it thereto (Secs. 8(a), 13(b), (c), (d)).

4.

Consent to the Colorado River Compact.

By the terms of the Project Act (Secs. 4(a), 13(a)), the Congress consented to the Colorado River Compact, signed by representatives of the seven States of the Colorado River Basin at Santa Fe, New Mexico, on the 24th day of November, 1922 (Appendix 1), either as a seven-state compact or as a six-state compact, to be accompanied, in the latter event only, by an agreement on the part of California to limit the consumptive use in California of waters of the Colorado River System as hereinafter described.

5.

Offer and Acceptance of a Statutory Compact with California.

(a) The Project Act (Sec. 4(a), par. 1) provided that it should not take effect unless and until (1) the seven States of the Colorado River Basin should have ratified the Colorado River Compact, and the President, by public proclamation, should have so declared, or (2) if the said seven States should fail to ratify the said Compact within six months from the date of the passage of the act (December 21, 1928), then until six of the States, including California, should have ratified the Compact, waived the requirement of seven-state ratification, and the President, by public proclamation, should have so declared, and further, until

> ". . . the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in

consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."

(b) During the six-months period referred to in the Project Act, to wit, on March 4, 1929, the legislature of California enacted the legislation proposed by Section 4(a) of the Project Act (Appendix 3), on the following terms:

". . . in the event that the Colorado river compact . . . . is not approved within six months from the date of the passage of . . . the 'Boulder canyon project act' . . . by the legislatures of each of the seven states signatory thereto . . . . then when six of said states, including California, shall have ratified . . . and the President by public proclamation shall have so declared . . . the State of California as of the date of such proclamation agrees . . ."

to the proposal made by the Project Act.

(c) The State of California's acceptance of the Statutory Compact became effective only in consequence of the refusal of Arizona to ratify the Colorado River Compact, and if Arizona had made timely ratification of the Colorado River Compact, within six months of the ap-

proval of the Project Act, said Limitation Act, by its terms, would not have taken effect.

(d) At the expiration of six months following the passage of the Project Act, and pursuant to the authority vested in him by said act, and in accordance with the facts, the President, by public proclamation dated June 25, 1929 (Appendix 4), announced (1) that seven States had not ratified the Colorado River Compact within six months from the date of approval of the Project Act, (2) that six of the States, including California, had ratified the compact and waived the requirement of seven-state ratification, and (3) that California had met the requirements of the first paragraph of Section 4(a) of the Project Act, *i.e.*, the adoption of the California Limitation Act (Appendix 3).

(e) By said proclamation the President placed the Project Act, the Colorado River Compact as a Six-State Compact, and a Statutory Compact between the United States and California evidenced by the Project Act and the California Limitation Act (Appendix 3), in effect, and the said compacts since said date (June 25, 1929) have been, and now are, effective.

6.

Terms of the Statutory Compact Between the United States and California.

(a) During the consideration by the Congress of the successive bills which culminated in the enactment of the Boulder Canyon Project Act, the entire Boulder Canyon Project as an integrated plan was fully considered and made the subject of extensive hearings and floor debate. The plan which was the basis of Congressional

Investments and Obligations of the Defendant Public Agencies of the State of California in Works Served by Water Delivered by the United States Under Contracts With These Agencies (to nearest million dollars).

Palo Verde Irrigation District: Diversion works, canals, and distribution works	(See Note 1)
Imperial Irrigation District: All-American Canal and distribution work	$ 25,000,000[2]
Coachella Valley County Water District: All-American Canal and distribution works	27,000,000
Metropolitan Water District of Southern California: Parker Dam, Colorado River Aqueduct, and distribution works	321,000,000
City of Los Angeles: Reservoirs to receive Colorado River water, and related distribution works	9,000,000
San Diego (including San Diego County Water Authority): All-American Canal and San Diego extension of Colorado River Aqueduct	20,000,000
Subtotal	$402,000,000[3]

Notes:

[1]Palo Verde Irrigation District has expended an additional $6,000,000 on its works dependent on the waters of the Colorado River, but much of this was invested prior to its contract with the United States, and the entire sum is excluded from this tabulation.

[2]Imperial Irrigation District, in addition to its All-American Canal obligation of about $25,000,000 has invested about $29,000,000 in distribution and other works dependent on the Colorado River.

[3]If all the direct investments of the defendants in their water supply works were included, *i. e.*, Palo Verde Irrigation District's additional $6,000,000 and Imperial Irrigation District's additional $29,000,000, this total would become $437,000,000.

action included (1) the construction by the United States of Hoover Dam and the All-American Canal and works appurtenant to these structures, (2) the assumption by California agencies of financial obligations to repay the cost of these works, (3) the construction by California agencies with their own funds of the Colorado River Aqueduct, transmission lines and other works, and (4) the delivery from storage by the United States, under contract, of adequate supplies of water for the Colorado River Aqueduct, the Palo Verde Irrigation District and the All-American Canal. The water requirements of these California projects, now represented by the defendants herein, were well known to Congress to aggregate approximately 5,400,000 acre-feet per annum, substantially the quantities now evidenced by the water storage and delivery contracts hereinafter referred to. These requirements were encompassed by the expression "uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist," in the first paragraph of Section 4(a) of the Project Act. It was recognized by the Congress that this quantity was approximately 1,000,000 acre-feet per annum in excess of the 4,400,000 acre-feet per annum of waters apportioned by Article III(a) of the Colorado River Compact referred to in the Statutory Compact, and the Congress intended that, by the offer and acceptance of the Statutory Compact, the said 1,000,000 acre-feet of excess waters, to the extent that such waters might be physically available, should be made presently and permanently available by water delivery contracts for the service of these projects. The Congress recognized further that the Statutory Compact, in restricting California to the use of approximately 5,400,000 acre-feet per an-

num, would provide water only for the Colorado River Aqueduct, Palo Verde Irrigation District and the All-American Canal, and would require the abandonment of the claims of other California projects for which valid appropriations had been made, and which, together with those of the three projects above named, greatly exceeded 5,400,000 acre-feet per annum.

(b) California was induced to, and did, enact the Limitation Act and thus enter into the said Statutory Compact, in the light of the text of the Project Act and the legislative history thereof, and with the understanding that under the terms of the Colorado River Compact, the Project Act and the Statutory Compact, water in substantially the amounts now evidenced by the said water storage and delivery contracts would be made available for use in California, and that the United States would not impair its ability to perform such contracts by entering into agreements with others inconsistent with that understanding. Otherwise, the plan of the Project Act would have been infeasible. Water in substantially said quantities was, and is, essential to an economy in California able to sustain the contracts for electrical energy, and the contracts for repayment of the cost of the All-American Canal, upon which the financing of the Boulder Canyon project depended and depends. These facts were well known to, and recognized by, the Congress.

(c) California enacted the Limitation Act and thereby accepted the offer of a Statutory Compact in the light of its text and legislative history, which disclosed the following interpretations thereof:

(1) Said Statutory Compact authorized and permitted the Secretary of the Interior, on behalf of

the United States, to then contract to deliver from storage at Lake Mead to users in California, water up to the full quantities each year, stated in said Statutory Compact, and authorized and permitted users in California to then contract for and to presently receive and permanently use such waters in those quantities. Nothing in the Colorado River Compact or the Statutory Compact postpones or defers to 1963, or any other time, the authority of the United States and the defendants herein to contract with reference to, or the right of the defendants to use excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact.

(2) Said quantities are those required to enable the aggregate annual beneficial consumptive use in California (diversions less returns to the river) of not to exceed:

a. 4,400,000 acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus

b. One-half of all excess or surplus waters not apportioned by Article III(a) of the Colorado River Compact, including in such excess or surplus the waters referred to in Article III(b) of said Compact.

(3) The waters so contracted to be delivered by the United States are for permanent service and are available, among other purposes, to serve all uses under contracts made under the provisions of the Project Act and for the supply of any rights which existed in California as of June 25, 1929, the effective date of the Six-State Colorado River Compact

Other Investments and Obligations of California Entities Pursuant to Contracts With the United States Under the Boulder Canyon Project Act and Boulder Canyon Project Adjustment Act.

Hoover Dam: Energy contracts by which the repayment of the federal investment in Hoover Dam and power plant was underwritten by California power users	$196,000,000[4]
Electric transmission facilities built by California power users to perform their obligations to take Hoover Dam power	43,000,000
All-American Canal hydroelectric facilities	18,000,000
Subtotal	$257,000,000
Subtotal from previous page	402,000,000
Total	$659,000,000[5]

[4]The Government's investment in Hoover Dam and power plant is approximately $166,000,000. Of this, $25,000,000 is allocated to flood control and repayment is deferred until the balance of the investment is first repaid. In addition, however, the power rates are required to produce, during 50 years, $25,000,000 for payment to a "Colorado River Development Fund" in the federal treasury, and $30,000,000 for payment to Arizona and Nevada in lieu of taxes. (See the Boulder Canyon Project Adjustment Act: Act of July 19, 1940, 54 Stat. 774.) With these adjustments, the obligation reflected in the power contracts is approximately $196,000,000. The California contractors underwrote all of this, subject to the option of Arizona and Nevada to take, release, and take again from time to time, 35.2518% of the firm energy. (See H. Doc. 717, 80th Cong., p. 94.)

[5]The defendants' total investments and obligations undertaken in reliance on Government contracts, $659,000,000, compares with total investments dependent on the Colorado River in the amount of $694,000,000. (See Note 3.)

and the Statutory Compact between the United States and California.

(4) The said Statutory Compact does not provide for the reduction of said quantities in consequence of reservoir evaporation or other losses occurring prior to delivery of said waters at the points of diversion in California specified in the contracts hereinafter referred to.

7.

Performance of the Statutory Compact by the Principal Parties Thereto.

Prior to the time when Arizona claimed rights under the said Statutory Compact as a third party beneficiary thereof, and prior to the assertion by the United States of rights and claims adverse to defendants, now stated in the pending Petition of Intervention, the principal parties thereto (the United States and California) had confirmed and applied the meaning and intent thereof above stated, in the manner hereinafter described.

8.

Contracts of the Defendants With the United States.

(a) *Regulations of 1930.* On April 23, 1930, the Secretary of the Interior, pursuant to the authority vested in him by the Boulder Canyon Project Act, promulgated general regulations for the storage and delivery of water (Appendix 9). On November 5, 1930, he requested the Division of Water Resources of the State of California to recommend the proper apportionment, among the claimants in California, of the waters (stated in acre-feet per annum) to which California might be entitled

under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, in the following categories, as stated by the Secretary (H. Doc. 717, 80th Cong., p. A477):

> "I. Of the water which may be available to California by paragraph (a) of Article III of the Colorado River Compact . . .
>
> "II. Of the water which may be available to California by paragraph (b) of Article III of the Colorado River Compact . . .
>
> "III. Of the water which may be available to California over and above the foregoing . . ."

(b) *Seven Party Water Priority Agreement.* On August 18, 1931, pursuant to the request of the Secretary dated May 9, 1930, the defendant public agencies of the State of California entered into the so-called Seven Party Agreement (Appendix 10) establishing priorities, as among themselves, to the waters which might be available for use in California, and the Division of Water Resources of the State of California recommended to the Secretary of the Interior the inclusion of the same in the water delivery contracts into which the United States might enter with each of them.

(c) *Regulations of 1931.* On September 28, 1931, the Secretary of the Interior promulgated general regulations (Appendix 8) incorporating the foregoing recommendations. The said regulations are now in full force and effect with respect to the delivery of water from storage for use in California. Their full text appears as Appendix 8 and the effect of the schedule of priorities therein contained is tabulated below:

Priority No.	Agency and description	Annual quantity in acre-feet (beneficial consumptive use)
1.	Palo Verde Irrigation District—104,500 acres in and adjoining existing district	
2.	Yuma project (California division)—not exceeding 25,000 acres	
3.	(a) Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by All-American Canal	3,850,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
4.	The Metropolitan Water District and/or City of Los Angeles	550,000
5.	(a) The Metropolitan Water District and/or City of Los Angeles	550,000
	(b) City and/or County of San Diego	112,000
6.	(a) Imperial Irrigation District and lands in Imperial and Coachella Valleys to be served by All-American Canal	300,000
	(b) Palo Verde Irrigation District—16,000 acres of adjoining mesa	
		5,362,000
7.	Agricultural use in the Colorado River Basin in California, as designated on Map 23000, U. S. Bureau of Reclamation.	All remaining water available for use in California.

The quantities tabulated aggregate 5,362,000 acre-feet per annum. To the extent of 962,000 acre-feet per annum, these are "excess or surplus waters" within the meaning of the Statutory Compact. These regulations authorize contracts to be made with the defendants for permanent service in that net quantity, for use in California, without provision for further reduction in consequence of reservoir or other losses occurring prior to delivery thereof in California; require that the uses of Indians in California (which are included as part of the requirements of the Yuma project and of the Coachella Valley County Water District), and the uses on public lands of the United States (which are included as part of the requirements of Palo Verde Irrigation District, Imperial Irrigation District and Coachella Valley County Water District) be charged against the uses available to California under the Colorado River Compact and the Statutory Compact; and direct that all beneficial consumptive uses shall be measured in terms of diversions less returns to the river.

(d) *Water delivery contracts.* Pursuant to the aforesaid statutory authority and in accord with the aforesaid regulations, the United States subsequently entered into contracts with the defendant public agencies of California for the delivery of water to them at stated points of diversion, in the quantities and in accord with the priorities stated in said regulations. These contracts are tabulated in paragraph 34 of Defendants' Answer to Arizona's Bill of Complaint, herein incorporated by reference as though fully stated, and the texts thereof appear in appendixes identified in that tabulation. Inherent in said contracts was and is the right to the present and perma-

nent use of excess and surplus waters, if such waters are physically available.

(e) *Hoover Dam power contracts.* Pursuant to the requirement of the first paragraph of Section 4(b) of the Project Act, that the Secretary of the Interior, in advance of construction, "make provision for revenues by contract" adequate to repay the Government's investment in Hoover Dam, the Secretary of the Interior, on April 26, 1930, entered into contracts with entities in California whereby they undertook to pay for, whether used or not, all of the firm energy to be produced by Hoover Dam. Defendant City of Los Angeles underwrote such an obligation with respect to approximately 33% of such firm energy, and defendant The Metropolitan Water District of Southern California with respect to approximately 36% of such firm energy (Appendix 20), the use thereof, in the case of that District, being restricted by the terms of its power contract to the pumping of water into and in the Colorado River Aqueduct. Said District assumed that obligation only on the clear understanding that such water would be made available concurrently with the District's obligation to pay for the power required to pump it. The satisfaction of that District's water delivery contracts (Appendixes 19, 21) as appears from the table of priorities above referred to, was then dependent to the extent of 550,000 acre-feet per annum upon the use of "excess or surplus waters" within the meaning of the Statutory Compact.

(f) *All-American Canal repayment contracts.* Pursuant to the provisions of the second paragraph of Section 4(b) of the Project Act, requiring the Secretary of the Interior, in advance of the construction of the All-

American Canal, to "make provision for revenues by contract or otherwise," to repay the government's investment therein, the Secretary entered into contracts with defendants Imperial Irrigation District (Appendix 13), City of San Diego (Appendixes 15, 23) and Coachella Valley County Water District (Appendix 16), whereby the United States agreed to deliver water pursuant to the regulations dated September 28, 1931 (Appendix 8), and to construct the All-American Canal to the capacity required to deliver these quantities, and these defendants agreed to repay the cost of the All-American Canal built to that capacity.[1] The water agreed to be delivered to San Diego, to enable the beneficial consumptive use of 112,000 acre-feet per annum, as appears from said table of priorities, was to be provided in its entirety from "excess or surplus" waters within the meaning of the Statutory Compact between the United States and California,[2] and the waters to be delivered to Imperial Irrigation District and Coachella Valley County Water District included 300,000 acre-feet per annum of water of that category. The All-American Canal was designed and constructed by the Department of the Interior to carry the quantities of water to which said defendants were entitled under the said regulations.

---

[1]The All-American Canal contracts combine the water delivery features of Section 5 and the repayment requirements of Section 4(b) of the Project Act.

[2]The water rights of San Diego were subsequently merged with those of the Metropolitan Water District of Southern California. (Appendixes 24, 26), and it receives water as a part of that District through the Colorado River Aqueduct.

9.

Legislative and Administrative Interpretation of the Statutory Compact.

(a) *Boulder Canyon Project Appropriation Acts.* The contracts of the defendants and other entities in California with the United States, described in Paragraph 8 of this Answer, were reported by the Secretary of the Interior to the Congress and accepted by the Congress, in conformity with Section 4(b) of the Project Act, as the basis for the appropriation of more than $160,000,000 for the construction of Hoover Dam and power plant, and more than $50,000,000 for the construction of the All-American Canal, and the said sums were expended and the said dam and canal were constructed by the United States and are now in operation. Without the contracts of the defendants, attacked by Arizona in this action, the United States could not have built the Boulder Canyon Project upon the conditions prescribed by the Congress.

(b) *Colorado River Aqueduct Act.* In 1932 the Congress granted to the defendant, The Metropolitan Water District of Southern California, a right of way 250 feet in width across Government lands in Riverside, San Bernardino and Los Angeles Counties, together with other lands and rights of way, all for the purpose of constructing an aqueduct some 242 miles long of a capacity sufficient to transport water in the quantity so contracted for by the said Metropolitan Water District (Act of June 18, 1932, 47 Stat. 324).

(c) *Parker Dam Reauthorization Act.* In 1935 the Congress authorized the construction of the Parker Dam and ratified all contracts theretofore made in connection therewith (Appendix 5, Act of August 30, 1935, 49 Stat. 1028, p. 1039). Contracts so ratified included the contract (Appendix 22) under which The Metropolitan Water District had undertaken to finance the construction of Parker Dam for the specific purpose, among other things, of providing a diversion point for water so contracted to be delivered from storage, and also the contracts between the United States and The Metropolitan Water District for the delivery from storage of waters of the Colorado River (Appendixes 19, 21) and the contract for electrical energy from Hoover Dam (Appendix 20). The Parker Dam contract so ratified, like the District's Hoover Dam power contract, restricted the use of power to pumping water into and in the aqueduct.

(d) *Boulder Canyon Project Adjustment Act.* In the Boulder Canyon Project Adjustment Act (Act of July 19, 1940, 54 Stat. 774) the Congress authorized the amendment of the power contracts entered into under the Boulder Canyon Project Act. The Hoover Dam power and water delivery contracts were fully considered by the Congress during the consideration of this measure. On May 20, 1941, the Secretary of the Interior promulgated regulations thereunder, allocating a minimum of 17.5554% and a maximum of 36.9439% of the firm energy to be generated at Hoover Dam to the defendant City of Los Angeles and 35.2517% of such firm energy to the defen-

dant The Metropolitan Water District of Southern California, the latter specifically restricted to "pumping Colorado River Water into and in its aqueduct." (H. Doc. 717, 80th Cong., p. A279.) On May 29, 1941, said City and District entered into contracts with the United States (*id.*, pp. A301, A369, A417) pursuant to said regulations, whereby they committed themselves to pay for said energy. The firm financial obligation of the Metropolitan Water District thereunder is not less than $75,000,000, for energy which it may use only in pumping the water to be delivered to it by the United States pursuant to the water delivery contracts between the United States and that District. (Appendixes 19, 21, 24.)

(e) *San Diego Aqueduct Legislation.* In a contract between the United States and the City of San Diego (October 17, 1945; Appendix 25), the United States undertook to build an aqueduct "running from a connection with the Colorado River aqueduct of the Metropolitan Water District of Southern California near the west portal of San Jacinto tunnel in Riverside County, to San Vicente Reservoir, in San Diego County. . . . ." The contract rights of the City of San Diego, 112,000 acre-feet per annum (Appendix 23), being in the fifth priority (Appendix 10), could not be satisfied from the 4,400,000 acre-feet of water apportioned to the Lower Basin by Article III(a) of the Colorado River Compact permitted and authorized to be used in California, but could be supplied only from "excess or surplus waters unapportioned by the Compact." Said contract was ratified by

the Congress (Act of April 15, 1948, 62 Stat. 171; Appendix 6). The Congress subsequently authorized a second barrel to be added to this Aqueduct by the United States (Act of Oct. 11, 1951, 65 Stat. 404; Appendix No. 7). The contract for the construction of the second barrel was entered into between the United States and the San Diego County Water Authority, dated April 1, 1952 (Appendix 27). The combined capacity of the two barrels is in excess of 200 c. f. s., capable of transporting 112,000 acre-feet per annum.

(f) *All-American Canal Appropriation Acts.* The requirements of the All-American Canal, built for the service of Imperial Irrigation District and Coachella Valley County Water District, not only were made known to the Congress through reports and House documents throughout a long period of years commencing in 1918, but said canal was designed and built by the United States to carry the full quantities of water which it had agreed to deliver from storage to Imperial Irrigation District, Coachella Valley County Water District, lands of the Yuma Project in California, and the City of San Diego. These requirements approximate 4,000,000 acre-feet per annum. Such requirements and capacity and the progress of construction were reported to the Congress during the consideration of more than twenty appropriation acts, between the years 1934 and 1952, and money was appropriated by the Congress in knowledge and approval thereof.

(g) *Coachella Distribution Works Authorization.* The Act of June 26, 1947, 61 Stat. 183, reauthorized appropriations for the construction of distribution and drainage systems in the Imperial and Coachella Valleys. During the consideration of this measure, the contracts of defendants Imperial Irrigation District and Coachella Valley County Water District were again reported and referred to in the Congress. The Coachella Valley County Water District participates in the 300,000 acre-feet of excess and surplus waters referred to in the sixth priority of the Interior Department regulations (Appendix 8), as well as in waters in the second priority, subject to the prior rights of Imperial Irrigation District. On July 22, 1947, the Secretary of the Interior transmitted to the President and to the Congress (H. Doc. 415, 80th Cong., reprinted in H. Doc. 717, 80th Cong., p. A659) a finding of feasibility of a "distribution system and appurtenant protective works" for the Coachella Valley Division of the All-American Canal. In this finding, which had the effect of an authorization for construction under Sections 7(b) and 9(a) of the Reclamation Project Act of 1939, the Secretary reported the water requirements of the defendant Coachella Valley County Water District, and the progress of construction of the Coachella Branch of the All-American Canal, in accordance with that district's water delivery contract with the United States (Appendix 16). On December 22, 1947, a supplemental contract, relating to repayment of cost of these distribution works (Appendix 17), was entered into between the United States and

Coachella Valley County Water District, appropriations for the construction of these works were made by the Congress, and said works were constructed and are now in operation.

(h) In the manner herein recited, and in other ways, the principal parties to the said Statutory Compact, the United States and California, have confirmed the interpretation, meaning and intent thereof.

10.

Investments by the Defendants.

Long before Arizona asserted her present interpretations of the said Statutory Compact, or the United States asserted the claims or expressed the doubts stated in its Petition for Intervention, the California water-using agencies, defendants herein, entered upon the construction of costly works and assumed irrevocable obligations in reliance upon, and dependent upon, delivery of water under their said contracts with the United States and the Statutory Compact between the United States and California entered into, interpreted and applied by the parties thereto as hereinbefore alleged. The investments or obligations of the defendant public agencies in works dependent upon the fulfillment by the United States of these contracts, are tabulated below:

11.

Arizona's Status as a Third Party Beneficiary of the Statutory Compact.

(a) Arizona, as a third party beneficiary of said Statutory Compact, was well and fully aware of the construction, interpretation and application of the said Statutory Compact by the principal parties thereto, to wit, the United States and California, long before Arizona sought to avail herself of any benefits as a third party beneficiary thereof or asserted her present interpretations thereof. Such knowledge on the part of Arizona is disclosed in the pleadings and briefs submitted by that State to this Court in *Arizona v. California, et al.*, 283 U. S. 423 (1931); *Arizona v. California, et al.*, 292 U. S. 341 (1934); and *Arizona v. California, et al.*, 298 U. S. 558 (1936); in the legislative history of the statutes heretofore referred to; in the published reports of the executive departments; and disclosed otherwise by the course of conduct of Arizona in opposing the Boulder Canyon Project, the Colorado River Compact, the construction of Parker Dam, and the appropriations by Congress to construct Hoover Dam and the All-American Canal.

(b) Any rights of Arizona as a third party beneficiary are governed by the said Statutory Compact as interpreted, construed and applied by the principal parties thereto, and said State cannot lawfully assert rights as against either the United States or California, nor can the United States lawfully accord to Arizona benefits inconsistent therewith.

12.

Obligations of the United States.

(a) The United States is bound by the said Statutory Compact and the California water-delivery contracts herein referred to, in accordance with the intent and meaning thereof as evidenced by the contemporaneous interpretations and application thereof as hereinabove alleged, and has the right to, and is obligated to fully perform, such Statutory Compact and contracts in accordance with said intent and meaning. Failure or refusal of the United States to continue to so fully perform its obligations under said Statutory Compact and contracts would result in great and irreparable injury and damage to defendants herein.

(b) The California water-using agencies, defendants herein, have fully performed to date, and are performing, all obligations of all of the said contracts with the United States.

(c) The aggregate of the quantities of water which the United States has agreed in said contracts (subject to availability under the Colorado River Compact and the Boulder Canyon Project Act) to deliver to the defendants from storage is the quantity required to enable them to make aggregate annual beneficial consumptive use (diversions less returns to the river) in California of 5,362,000 acre-feet. There are so available for delivery from storage by the United States for permanent service, and for receipt and beneficial consumptive use by the

defendants, without violating the Colorado River Compact or the Boulder Canyon Project Act or the said Statutory Compact, quantities of water at least equal to that amount.

(d) Within the authority and limitation of said Statutory Compact, construed and applied as herein alleged, said contract rights of the defendants, severally and collectively, are senior in time and right to any and all rights which may exist by virtue of contracts between the United States and any other parties for the delivery of water from Hoover Dam storage to, or for use in, Arizona and Nevada, and are senior to all claims of the United States to the right to make consumptive uses of water anywhere in the Colorado River Basin adverse to the claims of California and these defendants, other than those claims of the United States specifically admitted in Paragraph 44 of this Answer.

SECOND AFFIRMATIVE DEFENSE.

Defendants Have Appropriative Rights, Recognized by the Boulder Canyon Project Act and Protected by the Statutory Compact Between the United States and California, to the Beneficial Consumptive Use in California of Not Less Than 5,362,000 Acre-feet of Colorado River System Water Per Annum, Senior to the Claims Made by the United States to Water for Consumptive Use, With Certain Exceptions.

13.

Incorporation by Reference of First Affirmative Defense.

All of the allegations of the First Affirmative Defense of this Answer are referred to and made a part of this Second Affirmative Defense as though fully here set out.

14.

Incorporation by Reference of Portion of Answer to Arizona.

All of the allegations contained in Paragraphs 44 and 45 of the Defendants' Answer to Arizona's Bill of Complaint are referred to and made a part of this Second Affirmative Defense as though here fully set out.

15.

Total Appropriations of Defendants.

(a) Appropriative rights of the defendants, as described in Paragraphs 44 and 45 of their Answer to Arizona's Bill of Complaint, were initiated during the period 1877 to 1926, the greater portion of them antedating 1900.

(b) Prior to June 25, 1929, the defendants herein and other appropriators in California were vested with valid appropriative rights entitling said defendants to the beneficial consumptive use (diversions less returns

to the river) in California, of an aggregate quantity of water from the Colorado River System greatly in excess of 5,362,000 acre-feet per annum. In addition to the projects of the defendants in this action, there are large areas in California readily susceptible of irrigation from the Colorado River System by means of feasible projects for which valid appropriations had been made under the laws of California long prior to the enactment of the Boulder Canyon Project Act. In consequence, however, of the limitation imposed upon California's uses by the said Statutory Compact, California's appropriations, otherwise valid, were restricted by the formula stated in said Statutory Compact to a basis adequate only to supply the amounts required by the Palo Verde Project, the Colorado River Aqueduct, and the All-American Canal. Since that date defendants have been, and now are, vested with valid appropriative rights entitling said defendants to such beneficial consumptive use of an aggregate quantity of water not less than 5,362,000 acre-feet per annum. Said rights were on said date, and are, within, protected by and capable of being satisfied from the beneficial consumptive uses provided for California by the Statutory Compact between California and the United States.

(c) All of said quantity can be put to beneficial consumptive use by the defendant public agencies of California and is required by said defendants for the service of their inhabitants and lands. They have built costly works and assumed irrevocable obligations for that purpose, referred to in Paragraph 10 of this Answer, in reliance upon these appropriations and the recognition thereof in the Colorado River Compact, the Boulder Canyon Project Act, and the Statutory Compact between the United States and California, and have at all times exer-

cised due diligence, and are now exercising due diligence, to use all of the water so appropriated.

16.

Seniority of California's Appropriations.

All of the appropriations of each of the defendants above alleged are senior in time and right to all claims of the United States for the consumptive use of waters of the Colorado River System in any state with the partial exception of certain beneficial consumptive uses which may have been initiated by the United States prior to one or more of the dates of the initiation of defendants' appropriative rights. The exact claims to appropriative rights by the United States are unknown to the defendants, but, upon information and belief, defendants allege that the quantities thereof are not sufficient to interfere with the fulfillment of the appropriative rights of the defendants as such rights are recognized by the Boulder Canyon Project Act and the Statutory Compact.

17.

Present Perfected Rights of California.

(a) Section 6 of the Boulder Canyon Project Act requires the United States to use Hoover Dam and the reservoir thereby created for the purpose, among others, of satisfaction of present perfected rights in pursuance of Article VIII of the Colorado River Compact.

(b) Article VIII of the Colorado River Compact provides, among other things, that:

> "Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any,

by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III."

(c) As of June 25, 1929, the effective date of the Colorado River Compact, the Boulder Canyon Project Act and the Statutory Compact, projects had been constructed and were in operation in California with rights to the beneficial consumptive use of more than 4,950,000 acre-feet per annum of the water of the Colorado River System. Rights to the use of that quantity were part of then vested appropriative rights of the defendants valid under the laws of California, and valid under the Reclamation Laws of the United States, to the beneficial consumptive use of a quantity greatly in excess of 5,362,000 acre-feet per annum of waters of the Colorado River System.

(d) The present perfected rights of the defendants, within the meaning of Article VIII of the Compact and Section 6 of the Boulder Canyon Project Act, as of June 25, 1929, the effective date of said Compact and Act, were not less than 4,950,000 acre-feet per annum.

18.

Conformity With Act and Compacts.

The appropriative rights of the defendants to the beneficial consumptive use of 5,362,000 acre-feet per annum of the waters of the Colorado River System can be satisfied without violating the terms of the Colorado River Compact, the Boulder Canyon Project Act or the Statutory Compact between the United States and California and are recognized and confirmed by their water delivery contracts with the United States.

TRAVERSE OF THE ALLEGATIONS OF THE PETITION.

19.

Incorporation by Reference of First and Second Affirmative Defenses.

All of the allegations of the First and Second Affirmative Defenses of this Answer are referred to and made a part of this Traverse of the Petition for Intervention of the United States as though here fully set out.

Traverse of Part One: Introduction and Background.

20.

Answering Paragraph I of the Petition of Intervention on Behalf of the United States of America, defendants admit the allegations thereof are substantially correct, but allege that the rights, interests and claims of Arizona and defendants referred to in said paragraph relate to the use of waters of the Colorado River System as defined in Article II of the Colorado River Compact, and not merely to the waters of the main stream of the Colorado River. Defendants also call attention to the fact that subsequent to the filing of the Petition for Intervention of the United States, the State of Nevada, on December 14, 1953, filed its Motion for Leave to Intervene and Petition of Intervention, claiming as follows:

> ". . . The State of Nevada being a signatory to the Colorado River Compact, and being one of the Lower Basin States defined in said Compact and being a user of and entitled to the right to the beneficial consumptive use of a portion of the Colorado River System water is, by reasons thereof, an indispensable party to this suit . . ."

21.

Answering Paragraphs II and III of said Petition, admit that the allegations of said paragraphs are substantially correct, but allege that Arizona, in the present action seeks to quiet title not only as against the defendants, but also as against the other States of the Colorado River Basin.

22.

Answering Paragraphs IV, V, and VI of said Petition, admit that the allegations of said paragraphs are substantially correct.

23.

Answering Paragraph VII of said Petition, allege that the facts therein referred to are set forth with more particularity and accuracy in Paragraphs 3 and 4 of the Answer of Defendants to Arizona's Bill of Complaint in this action.

24.

Answering Paragraph VIII of said Petition:

(a) Deny all of the allegations of said paragraph except insofar as said allegations conform to the allegations of this paragraph of this Answer.

(b) Deny that enactment by California of a Limitation Act was a condition to the requisite Congressional consent to a Seven-State Compact, and allege that such was a condition only to Congressional consent to a Six-State Compact.

(c) Allege that the proposed Seven-State Compact never became effective, but that, in the manner described in the First Affirmative Defense, a Six-State Compact

among California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and a Statutory Compact between the United States and California, did become effective June 25, 1929.

(d) Deny that the State of Arizona, on February 24, 1944, or at any other time, effectively ratified the Colorado River Compact either as a Seven-State or Six-State agreement. Allege that the Congress has consented to a Six-State Compact but not, after June 25, 1929, to a Seven-State Compact.

25.

Answering Paragraph IX of said Petition, allege that the provisions of the Colorado River Compact are set forth with more particularity in Paragraphs 5 to 15 inclusive of the Answer of Defendants to Arizona's Bill of Complaint. The text of that Compact appears in Appendix 1.

26.

Answering Paragraph X of said Petition, admit that the Upper Colorado River Basin Compact was signed October 11, 1948, and became effective April 6, 1949. Allege that said Upper Colorado River Basin Compact is, by its terms, subject to the Colorado River Compact proclaimed effective June 25, 1929, as a Six-State Compact among California, Colorado, Nevada, New Mexico, Utah and Wyoming. Allege that California is not a party to the Upper Colorado River Basin Compact, and that neither California nor the United States is bound by any provision thereof nor any interpretation of the Colorado River Compact appearing or implied therein. Allege that the interpretation and admjnistration of the Upper Colo-

rado River Basin Compact will be controlled by the interpretation of the Colorado River Compact in the present action.

27.

Answering Paragraph XI of said Petition, admit the allegations of said paragraph, but allege that the purported contract dated February 9, 1944, between the United States and the State of Arizona was entered into after signature and publication, and with full knowledge of the terms of the Treaty between the United States of America and the United Mexican States which had been executed by the plenipotentiaries of the respective countries on February 3, 1944 (Treaty Series 994; 59 Stat. 1219). Certain of the terms of that Treaty are recited in Paragraph 29 of this Answer.

Traverse of Part Two: Interests of the United States of America in the Colorado River System.

28.

Answering Paragraph XII of said Petition, admit and allege that it is important to all the parties that this court resolve the issues framed by all the pleadings on file herein. Allege further with respect to the five categories of interests of the United States set forth under subparagraphs A, B, C, D, and E of said Paragraph XII, that a determination of the rights, responsibilities and duties of the United States with respect to each of these categories will affect the interests of all of the States of the Colorado River Basin, as well as of the complainant and defendants herein. To the extent that Paragraph XII of said Petition incorporates by reference Paragraphs XIII through XXX thereof, defendants incorporate herein

by reference the allegations, admissions and denials of Paragraphs 29 through 44 of this Answer to the Petition of Intervention on Behalf of the United States:

29.

Answering Paragraph XIII of said Petition:

(a) Deny that the obligations of the United States under the Treaty with the United Mexican States are accurately alleged in said paragraph.

(b) Allege that said Treaty allots to Mexico a guaranteed annual quantity of 1,500,000 acre-feet of water, from any and all sources in the Colorado River System within the United States, as well as any other quantities arriving at the Mexican points of diversion on the Colorado River. Said Treaty also provides that in any year in which there exists a surplus of waters of the Colorado River System in excess of the amount necessary to supply all uses in the United States and the guaranteed quantity to Mexico, the United States will deliver additional waters of the Colorado River System so as to provide a total quantity not to exceed 1,700,000 acre-feet in such year. Allege that said guaranteed quantity of 1,500,000 acre-feet may be reduced in the event of extraordinary drought or serious accident to the irrigation system in the United States, in the same proportion as consumptive uses in the United States are reduced. Allege that the term "any and all sources" includes all the waters of the Colorado River System, including those of the Gila River and its tributaries.

(c) Allege that the Treaty definitions relating to "consumptive use" are as follows:

Article I(j): "'Consumptive use' means the use of water by evaporation, plant transpiration or other

manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream."

Article I(d): "'To divert' means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods."

Article I(h): "'Return flow' means that portion of diverted water that eventually finds its way back to the source from which it was diverted."

and allege that said definition is binding upon the United States and the States of the Colorado River Basin and is confirmatory of the meaning of "consumptive use" in the Colorado River Compact and the Boulder Canyon Project Act.

(d) Allege that Article III(c) of the Colorado River Compact provides that the waters to be delivered to Mexico shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in Paragraphs (a) and (b) of Article III, and if such surplus shall prove insufficient, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to their obligation, stated in Paragraph (d) of Article III, not to cause the flow of the River at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for

any period of ten consecutive years reckoned in continuing progressive series commencing October 1, 1929. Allege that the United States, in conformity with the Mexican Water Treaty and said Compact, is obligated to make delivery to Mexico first from the waters surplus to those specified in Paragraphs (a) and (b) of Article III of said Compact, utilizing for that purpose first the waters which may be available without violation of the provisions of the Statutory Compact between the United States and California which recognize the right in California to the use of one-half of all waters in excess of those apportioned by Article III(a) of the Colorado River Compact. Allege that if the waters surplus to those specified in Paragraphs III(a) and III(b) of the Colorado River Compact shall prove insufficient to supply the water required to be delivered to Mexico, then the United States is obligated to deliver the deficiency to the extent of one-half by reduction of the beneficial consumptive uses apportioned to the Upper Basin by Article III(a) of said Compact, and one-half by reduction of the "increase of use" permitted to the Lower Basin by Article III(b) of said Compact.

30.

Answering Paragraph XIV of said Petition:

(a) Admit all of the allegations thereof not herein specifically denied.

(b) Deny that said Paragraph XIV fully or accurately states the objectives of the Boulder Canyon Project Act. Allege that Section 1 of that Act authorized the construction of Hoover Dam and the All-American Canal

". . . for the purpose of controlling the floods, improving navigation and regulating the flow of the

Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, . . ."

Section 6 of that Act directs that:

". . . the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. . . ."

Section 9 of that Act, referring to the All-American Canal, directs that the public lands ". . . practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry," and thereafter opened for entry under the reclamation law with preference to veterans.

Sections 8(a), 13(b), (c), (d) of that Act subjected all the rights of the United States, and of those claiming under it, to the Six-State Colorado River Compact.

(c) Further answering Paragraph XIV of said Petition, admit that, pursuant to the statutes therein referred to, the United States has undertaken the construction of large projects in the Lower Basin involving the expenditure of several hundred million dollars, but allege that the expenditure of substantially all of the said sum in the construction of the projects enumerated in said Paragraph XIV, with the sole exception of Davis Dam, was, by the

terms of Section 4(b) of the Boulder Canyon Project Act and by the terms of the Reclamation Law, conditioned upon and made possible by the assumption by the defendants, and other entities in California, of the obligation to repay the cost thereof, and that defendants incurred said obligations in reliance upon agreements with the United States recited in the First Affirmative Defense of this Answer. These works, the obligations which the defendants and other California entities have assumed to make possible their construction by the United States, and the additional expenditures which the defendants have made from their own funds (amounting together to more than $600,000,000) to enable them to discharge said obligations, are described in Paragraph 10 of this Answer, and in Exhibits A, B and C accompanying Defendants' Answer to Arizona's Bill of Complaint.

Traverse of Part Three: Specific Response of the United States of America to the Pleadings of the Parties.

31.

Answering Paragraph XV of said Petition, allege that the contracts referred to therein are described with more particularity in the First Affirmative Defense of this Answer, and in the Appendixes enumerated in said Affirmative Defense. Deny that the quantity of water to which defendants are entitled under said contracts is as stated in said Paragraph XV of said Petition, and allege that the United States is obligated pursuant to the Statutory Compact and said Contracts to deliver, at the defendants' points of diversion on the Colorado River, so much water (including all other water diverted by the defendants for use within the State of California from the Colorado River

System), as may be necessary to enable defendants to make aggregate annual beneficial consumptive use (diversions less returns to the river) in California of 5,362,000 acre-feet.

32.

Answering Paragraph XVI of said Petition, admit the allegations of said paragraph and allege that the facts relating to the Seven-Party Agreement and the terms thereof are more fully set forth in the First Affirmative Defense of this Answer and in Paragraphs 32 and 33 of the Answer of Defendants to Arizona's Bill of Complaint. The text of the Seven-Party agreement appears in Appendix 10.

33.

Answering Paragraph XVII of said Petition, admit the allegations of said paragraph. Allege that the deliveries of water to the Metropolitan Water District of Southern California are inclusive of the deliveries to the City of San Diego.

34.

Answering Paragraph XVIII of said Petition, deny the allegations of said paragraph, and allege that the quantity of water covered by the contracts between the United States and the State of Nevada referred to in said paragraph (subject to availability for use in Nevada under the Colorado River Compact and the Boulder Canyon Project Act) is "so much water, including all other waters diverted for use within the State of Nevada from the Colorado River System, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year."

35.

Answering the allegations of Paragraph XIX of the Petition:

(a) Admit that on February 9, 1944, the Secretary of the Interior signed a purported contract with the State of Arizona for the storage and delivery of water, but deny that the same is valid or effective.

(b) Deny that said purported contract provided for the delivery annually of 2,800,000 acre-feet or any other specific quantity of water, and allege that it purported only to provide for the delivery, under specified terms and conditions, of water which, when added to other quantities used by Arizona, would not exceed a maximum of 2,800,000 acre-feet per annum. Said contract also makes reference to the availability to Arizona of one-half of the excess or surplus waters unapportioned by the Colorado River Compact.

(c) Allege that said purported contract contained the following, among other provisions, and that if said contract has any validity or effect, the United States and Arizona are bound as follows:

> Article 7. "(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies."

"Article 10. Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III(a) of the Colorado River Compact; (3) what part, if any, is within Article III(b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by said Compact; and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system; provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III(a) of the Colorado River Compact between the Upper Basin and the Lower Basin."

"Article 18. Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act such definitions shall apply in construing this contract."

(d) Allege that all deliveries under said purported contract are subject to the rights of the defendants to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of waters of the Colorado River System.

(e) Allege that said purported contract was executed after signature of the Mexican Water Treaty and with knowledge of its terms, and that if said contract has any validity or effect the United States and Arizona are bound by the definition of consumptive use, and other terms, ap-

pearing in said treaty, in the interpretation and administration of that contract.

(f) With respect to the contract dated March 4, 1952, between the United States and Wellton-Mohawk Irrigation and Drainage District, allege that said contract, and, upon information and belief, all other water delivery contracts between the United States and users in Arizona, fail to refer in any manner to the purported contract dated February 9, 1944, between the United States and the State of Arizona, and are not, in terms, made subject thereto, but do provide for the use of Colorado River System water.

36.

Answering Paragraph XX of said Petition, defendants deny that the quantity of water covered by the contracts referred to in Paragraph XX of said Petition is correctly stated in said Paragraph XX, and refer to Paragraphs 31, 34 and 35 of this Answer to the Petition of Intervention on Behalf of the United States. Admit that controversies exist between Arizona and the defendants herein, but deny that the subjects of said controversies are fully or accurately set out in Paragraphs XXXI through XXXIX of said Petition, and allege that said controversies are more fully stated in Exhibit A to this Answer. Allege further that the determination of a number of these controversies will affect the interest of all of the States of the Colorado River Basin in and to the waters of the Colorado River System.

37.

Answering Paragraph XXI of said Petition, admit the allegations of said paragraph, and allege that certain of

the defendants, and other entities authorized by the laws of California, have entered into contracts with the United States requiring the payment to the United States of large sums for said electric energy generated at Hoover Dam as alleged in Paragraph 10 of this Answer. Allege further that under the Boulder Canyon Project Act, Section 4(b), the Secretary of the Interior, for the United States, was required to make contracts, in advance of any appropriations or expenditures, adequate to insure repayment of the costs of construction of the project, and the costs of operation and maintenance. Allege that the contracts made by the United States under such Act to insure such repayment were entered into with the defendants and other California entities, and made possible the Boulder Canyon Project and related works to which Arizona made no contribution.

38.

Answering Paragraph XXII of said Petition, admit the allegations of said paragraph and allege that the works therein referred to are described with more particularity in Exhibit "C" to the Answer of Defendants to Arizona's Bill of Complaint.

39.

Answering Paragraph XXIII of said Petition, deny that the State of Arizona is a party to the contract therein referred to between the United States and the Wellton-Mohawk Irrigation and Drainage District. Admit that the other allegations of said paragraph are substantially correct.

40.

Answering Paragraphs XXIV, XXV and XXVI of said Petition, admit the allegations of said paragraphs.

41.

(a) Answering Paragraph XXVII of said Petition and Appendix II-A thereto, defendants refer to Paragraph 51 of this Answer and allege that defendants are without information or belief as to the extent of the rights of Indians or Indian Tribes to the use of water of the Colorado River System, and placing their denial on that ground, deny that the rights claimed in said Petition by the United States as trustee for said Indians or Indian Tribes are as set forth in Appendix II-A to said Petition. Defendants note that the claims tabulated therein are stated in terms of "Diversions," and allege that the Colorado River Compact relates to beneficial consumptive use, not diversions; allege that the Boulder Canyon Project Act defines consumptive use as "diversions less returns to the river"; and allege that said definition and the amplification thereof contained in Article I of the Mexican Water Treaty is binding upon the United States. Defendants allege that it is necessary for the United States to state and prove its claims on behalf of Indians in terms of beneficial consumptive use, place of use, and alleged priority, with respect to each of said claims wheresoever located in the Colorado River Basin.

(b) Further answering said Paragraph XXVII, allege that no priority attaches to any claims of the United States to the use of water of the Colorado River System for or by Indians and Indian Tribes, in consequence of the Indian status of the users, that such claims would not possess in the absence of such status.

(c) Allege that any and all uses of water by Indians or Indian Tribes pursuant to obligations of the United States to such Indians or Indian Tribes are chargeable under the Colorado River Compact and the Boulder

Canyon Project Act to the Basin and to the State in which such uses are situate; and, at least, to the extent that such rights existed on June 25, 1929, are chargeable under Article VIII(a) of that Compact.

(d) Allege that Article VII of the Upper Colorado River Basin Compact (Act of April 6, 1949, 63 Stat. 31), which has been ratified by Arizona, Colorado, New Mexico, Utah, and Wyoming and to which the Congress has consented, provides with respect to water available for use in that Basin under the Colorado River Compact, that:

> "The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made . . ."

That Compact is subject, by its terms, to the Colorado River Compact as proclaimed by the President June 25, 1929.

(e) Allege that rights in the United States to beneficial consumptive uses of water, in quantities unknown to defendants, for and on behalf of Indians and Indian Tribes, exist throughout the entire Colorado River System, and are not confined to the Lower Basin. Allege that any determination as to the status, methods of measurement, and tests of priority of Indian rights in the Lower Basin will apply with equal force and effect to Indian rights in all States of the Colorado River Basin.

42.

Answering Paragraph XXVIII of said Petition and Appendix III thereto:

(a) Deny that any treaty to which the United States is a party authorizes it to make consumptive use of the

water of the Colorado River System for the support of fish or wildlife, and allege that no treaty or federal statute has undertaken to authorize any officer of the United States so to do.

(b) Allege that the United States, in Sections 8(a) and 13(b), (c), and (d) of the Boulder Canyon Project Act, subjected its rights and the rights of those claiming under it to the Colorado River Compact, and that these statutory provisions are applicable to uses for the benefit of fish and wildlife.

(c) Allege that, pursuant to the provisions of Article IV of the Colorado River Compact, if any right exists to the consumptive use of water for the support of fish and wildlife, such right is subservient to the use and consumption of water for agricultural and domestic purposes and for the generation of electric energy, and that the rights of the defendants are of these dominant categories.

(d) Allege that if the United States has rights to the consumptive uses of water for the support of fish and wildlife, such uses are chargeable under the Colorado River Compact to the Basin and to the State in which such uses are situate, and, at least, to the extent that such rights existed on June 25, 1929, are chargeable under Article III(a) of the Compact.

43.

Answering Paragraph XXIX of said Petition, admit that the statutes require Hoover Dam, Davis Dam and Parker Dam to be operated, for the purposes, among others, stated in Section 6 of the Boulder Canyon Project Act, of controlling the floods, improving navigation and regulating the flow of the Colorado River, and admit that

the waters impounded by those structures are required to be administered to effectuate said purposes, among others stated in said statutes, subject, however, to the terms of the Mexican Water Treaty. Defendants refer to Paragraph 30 of this Answer for a more complete statement of the relationship of these functions to other functions authorized in the Boulder Canyon Project Act.

44.

(a) Answering the allegations of Paragraph XXX of said Petition, deny that the United States has any rights to the use of water of the Colorado River and its tributaries as against the defendants, except as the same are specifically admitted in this Answer, and deny all other allegations of Paragraph XXX not specifically admitted.

(b) Answering the allegations of the first unnumbered subparagraph of said Paragraph XXX, which itemizes four categories of claims, lettered respectively (a), (b), (c), (d):

1. Referring to the claims under category "(a)," defendants deny that the United States has, as against the defendants or otherwise, any rights to the use of water for the projects stated in the said Petition and its Appendixes or any other projects in the Colorado River Basin (other than projects which are for the use of Indians) except rights which are subject to and controlled by the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California; and allege that to the extent that water is delivered by the United States to the defendants under contracts between the United States and the defendants for the delivery of stored water, such delivery is

not made in discharge of any right or claim of the United States adverse to California, but in satisfaction of the rights of the defendants recognized by said Act and Compacts and established, confirmed and administered under their respective contracts with the United States, all as stated in the First Affirmative Defense of this Answer. Allege that to the extent that the United States claims rights to the use of water to the full capacity of diversion, carrying and storage structures described in said Petition and its Appendixes, the present and future interests of all of the States of the Colorado River Basin are affected.

2. Referring to the claims under category "(b)," defendants admit that the United States has rights to the use of water of the Colorado River and its tributaries, as against the parties to this cause, to fulfill its valid obligations arising from its international treaties or obligations, but allege that such rights are not only as against complainant and defendants, but also as against the other States of the Colorado River Basin. Allege that no international treaty or obligation authorizes or requires the United States or any officer or employee thereof to breach or evade any obligation to the defendants. Deny that the United States has any right to the use of water of the Colorado River or its tributaries, as against the defendants, to fulfill any obligations it may have assumed by its contracts with others to deliver water and electric power, except as the same may be consistent with the terms of the Colorado River Compact, the Boulder Canyon Project Act, and the Statutory Compact between the United States and California, consistent with and subject to the contracts between the United States and the defendants referred to in the First Affirmative Defense of

this Answer, and consistent with and subject to the rights of the defendants alleged in the Second Affirmative Defense of this Answer.

3. Referring to the claims under category "(c)," defendants admit that the United States has rights, as against the parties to this cause, to the use of water in the Colorado River and its tributaries to fulfill the obligations emanating from its status as trustee for the Indians and Indian Tribes, but allege that such rights are not only as against complainant and defendants but also as against all other States of the Colorado River Basin. As to the nature and extent of such claims defendants here incorporate by reference Paragraph 41 of this Answer.

4. Referring to the claims under category "(d)," defendants admit that the United States has rights to the use of water in the Colorado River and its tributaries, as against the parties to this cause, to protect its interests in flood control and navigation to the extent that the same are necessary and have been specifically authorized by Acts of Congress, subject, however, to the provisions of the Mexican Water Treaty, but allege that such rights are rights not only as against complainant and defendants but also as against all other States of the Colorado River Basin. With reference to the allegations concerning fish and wildlife, defendants incorporate by reference Paragraph 42 of this Answer.

Inasmuch as the United States, in Paragraph XXX of its Petition, does not identify any of the enumerated claims therein with respect to quantity, place of use or priority, the admissions made with respect to them in this Answer do not relate to any specific quantity, place of

use or priority, and the defendants reserve the right to require proof thereof at the trial of this action.

(c) Aswering the allegations of the second unnumbered subparagraph of Paragraph XXX, defendants admit that the aggregate of the claims to the beneficial consumptive use of water in the five States in the Lower Basin, including the claims of the United States, exceeds the quantity of water, the beneficial consumptive use of which is apportioned to the Lower Basin of the Colorado River by the Colorado River Compact; allege that the amount so apportioned is 7,500,000 acre-feet per annum as stated in Article III(a) of the Colorado River Compact, and allege that said aggregate claims also exceed any probable quantity of water of the Colorado River System which may be permanently available for beneficial consumptive use in the Lower Basin, including both the water apportioned to the Lower Basin by Article III(a) of the Colorado River Compact and the excess or surplus water, the use of which is unapportioned by said Compact, including in such excess or surplus the increase of use permitted to the Lower Basin by Article III(b) of said Compact. Deny that a resolution of the controversy as contended for by defendants will infringe upon the interests of the United States to its detriment.

(d) Answering the allegations of the third unnumbered subparagraph of said Paragraph XXX, defendants have no knowledge or information sufficient, to form a belief as to the claims of the United States therein referred to for use of the National Park Service, Bureau of Land Management or Forest Service, and, placing their denial on that ground, deny said claims, and allege that the United States by the Boulder Canyon Project Act has

subjected its rights, and the rights of those claiming under it, to the provisions of the Colorado River Compact; allege that the rights of the defendants to the use of the water of the Colorado River System are prior and superior to said claims; allege that uses under said claims, if effected, will be chargeable under the Colorado River Compact to the Basin and the State in which they are situate; and allege that at least to the extent such rights existed on June 25, 1929, uses thereunder are chargeable under Article III(a) of the Colorado River Compact.

(e) Answering the allegations of the fourth unnumbered subparagraph of said Paragraph XXX, defendants deny the accuracy of the allegations of said subparagraph, and allege that, due to the insufficient supply of water permanently available to the Lower Basin under the Colorado River Compact to meet the aggregate of the claims to the uses in the Lower Basin of the waters of the Colorado River System, there is need for a decree of this Court determining the controversies disclosed by the pleadings in this cause. Allege further that a resolution of the controversy between complainant and defendants with respect to the interpretation of the various compacts, acts, contracts and other documents pleaded in this cause, and of the claims of the United States as alleged by the United States to be involved, will necessarily affect all of the states of the Colorado River Basin.

45.

(a) Answering the allegations of Paragraph XXXI(a) of said Petition: Deny all of the allegations of said paragraph not specifically admitted. Admit that the treaties and international conventions alluded to are valid and enforceable obligations binding the United States and all

parties to this cause, but deny that such treaties and conventions have the effects ascribed to them in said Petition, and refer to the defendants' allegations with respect thereto in Paragraphs 29, 42 and 44 of this Answer. Admit and allege that the Colorado River Compact is a valid and binding covenant among only the six States named in the Presidential proclamation of June 25, 1929, to wit, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and allege that the same is binding upon the United States. Admit that the Reclamation Act of 1902 and such acts amendatory thereof and supplemental thereto as are referred to in the pleadings in this cause, as well as the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act, are valid and enforceable enactments pursuant to which all of the parties to this cause, and all of the States of the Colorado River Basin, have received benefits. Admit and allege that contracts of the defendants with the United States involving the use and delivery of water and electric power are valid and binding upon the parties thereto.

(b) The allegations of Paragraph XXXI(b) do not appear to require answer by these defendants.

46.

Answering Paragraph XXXII of said Petition, deny that the questions in this controversy or their effect measured in acre-feet per annum are fully or accurately stated therein, and allege that the controversy, as developed in the pleadings to date, is summarized in Exhibit "A" annexed hereto, and herein incorporated by reference as though fully stated.

47.

Answering Paragraph XXXIII of said Petition:

(a) Deny that the quantity of water available to the Lower Basin under the Colorado River Compact is 8,500,000 acre-feet per annum, and allege that the quantity so available (subject to the terms of the Mexican Water Treaty), is in excess of that amount, and comprises the following:

1. Not less than an aggregate of 75,000,000 acre-feet for any period of ten consecutive years from and after October 1, 1929, measured at Lee Ferry, resulting from the obligation assumed in Article III(d) of the Colorado River Compact by the States of the Upper Division not to deplete the flow of the river at that point below that quantity. In addition:

2. Such quantities as may be required to flow from the Upper Basin into the Lower Basin in consequence of (i) the Statutory Compact between the United States and California, (ii) the obligation assumed by the States of the Upper Division in Article III(e) of the Colorado River Compact that they shall not withhold water which cannot reasonably be applied to domestic and agricultural uses, and (iii) prior appropriations in the Lower Basin not inconsistent with the apportionment made to the Upper Basin in Article III(a) of that Compact. In addition:

3. Such quantities as may be made available by the temporary draw-down of the reservoirs in the Lower Basin, consistent with the statutory directions as to

the functions of those reservoirs, notably Hoover Dam (Lake Mead). In addition:

4. The waters of the tributaries of the Colorado River in the Lower Basin, available for beneficial consumptive use. The waters of the tributaries so available aggregate approximately 3,000,000 acre-feet per annum. Of this amount, approximately 2,000,000 acre-feet per annum are available at places of use on the tributaries which make up the Gila River System in Arizona and New Mexico and 1,000,000 acre-feet per annum are available at places of use on other tributaries, particularly the Virgin River in Nevada and Utah, and the Little Colorado, Bill Williams, and miscellaneous other tributaries, in Arizona.

(b) Allege that the amount of 8,500,000 acre-feet, referred to in Paragraph XXXIII of said Petition, relates only to the aggregate of the beneficial consumptive uses governed by Articles III(a) and III(b) of said compact, but has no relation to either the quantities of water physically available in the Lower Basin or to the total quantities of the uses which may lawfully be made of the available water.

(c) Admit that the aggregate of the claims to rights to the beneficial consumptive use of water of the Colorado River System in the Lower Basin by claimants in Arizona, California, Nevada, Utah and New Mexico, exceeds 8,500,000 acre-feet per annum, and exceeds also the much larger quantity which is physically and lawfully available for permanent use in the Lower Basin.

Allege that the claim of Arizona to 3,800,000 acre-feet of beneficial consumptive use per annum of the water

of the Colorado River System measured in terms of "main stream depletion," is equivalent to more than 5,000,000 acre-feet measured at the place of use in terms of diversions less returns to the river.

(d) Allege that all of the water permanently available for beneficial consumptive use in the Lower Basin will be required to satisfy the rights of projects heretofore constructed or authorized in that Basin, with reasonable allowance for the future requirements of Nevada, Utah and New Mexico.

48.

Answering Paragraph XXXIV of said Petition:

Defendants concur in the request of the United States that the conflict with respect to the Boulder Canyon Project Act be resolved; extend this request to include the conflict with reference to the Colorado River Compact and the Statutory Compact between the United States and California; allege that the conflicts with reference to all three enactments are substantially as summarized in Exhibit A to this Answer; and allege that these conflicts involve the rights, responsibilities and obligations of the United States with respect to the entire Colorado River System and not merely the Colorado River, if that term in said Petition is intended to refer only to the main stream, and further, involve the rights and obligations of the United States with respect to all of the States of the Colorado River Basin.

49.

Answering Paragraph XXXV of said Petition, allege that the Secretary of the Interior on behalf of the United States contracted to deliver water from storage to defen-

dants in the amounts and on the terms set forth in the First Affirmative Defense of this Answer, and allege that said contracts are valid and binding and that the United States has the right and the duty to perform its obligations with respect to the Colorado River System in such way as to enable it to fulfill its contracts with defendants according to the terms thereof. Deny the allegations of said paragraph as they relate to the purported contract between the United States and Arizona dated February 9, 1944.

50.

Answering Paragraph XXXVI of said Petition:

With reference to the allegations of said paragraph concerning the purported ratification of the Colorado River Compact by Arizona on February 24, 1944, and the purported contract between the State of Arizona and the Secretary of the Interior dated February 9, 1944, defendants refer to Paragraphs 24 and 35 of this Answer, and in more detail, to Paragraph 59 of their Answer to Arizona's Bill of Complaint, which they here incorporate by reference. Deny that the United States is under any obligation or responsibility to the State of Arizona or any user of water in that State in consequence of either of those events.

51.

Answering Paragraph XXXVII of said Petition, defendants refer to Paragraph 41 of this Answer, and:

(a) Noting the allegation that the rights to the beneficial consumptive use of water by Indians and Indian Tribes are in no way subject to or affected by the Colorado River Compact, allege that Article VII of the Colorado

River Compact merely provides that nothing in said Compact shall be construed as affecting the obligations of the United States to Indian Tribes, but does not provide or imply that beneficial consumptive uses by Indian Tribes are not chargeable under said Compact to the Basin and the State in which they are situate in like manner as uses by others are charged. Allege that if the rights of Indians are not subject to and protected by the Colorado River Compact, they are subject to prior appropriations of other users in the Colorado River Basin, including those of these defendants.

(b) Join in the request of the United States that this Court declare and determine the rights of the Indians and Indian Tribes, but allege that the conflicts on this issue extend to the entire Colorado River System and not merely to the Lower Basin, and that the United States cannot exercise the claims which it asserts for itself and on behalf of Indians and Indian Tribes or perform its duties, not only with respect to Indians and Indian Tribes but also with respect to those with whom it has made contracts to store and deliver water, until such conflicts have been resolved. Defendants refer to the conflicts arising from the assertion in Paragraph XXVII of the Petition and its Appendix II-A of claims on behalf of Indians in terms of diversion rights and not beneficial consumptive uses, refer to the conflicts arising from the denial by the United States, in Paragraph XXXVII of its Petition, of the allegation of the defendants that all beneficial consumptive uses by Indians are chargeable to the beneficial consumptive uses available to the Basin under the Compact, and to the State, in which such uses are situate, refer to the provisions of Article VII of the Upper Colorado River Basin Compact quoted in

Paragraph 41 of this Answer, and refer to Section 13(b) of the Boulder Canyon Project Act, as well as the allegation made in Paragraph XXXVII of the Petition that uses by Indians and Indian Tribes are in no way subject to or affected by the Colorado River Compact. Defendants point to the resulting uncertainty as to (1) the beneficial consumptive uses claimed on behalf of Indians, (2) what quantities, if any, the United States may withhold from delivery to the Lower Basin by reason of its claims on behalf of Indians in the Upper Basin, (3) whether uses by Indians in both the Upper and Lower Basins are permissible in addition to the uses chargeable to such Basin under the Colorado River Compact or are chargeable as a part thereof, (4) the effect upon the obligations of the States of the Upper Division under Articles III(d) and III(e) of that Compact, (5) the extent to which such Indian claims may be affected by prior appropriations of others, including these defendants, and, finally, (6) whether, if the claims of the United States on behalf of Indians are sustained, the Colorado River Compact is capable of performance by any State.

(c) Allege that the determination of the issues tendered by the Petition in Paragraph XXXVII thereof will necessarily affect the substantial interests of all of the States of the Colorado River Basin.

52.

Answering Paragraph XXXVIII of said Petition, defendants deny each and every allegation of fact in said Petition which is substantially at variance with or contrary to the facts alleged in this Answer, in the pleadings of the defendants directed to those of Arizona and Nevada, and in the Exhibits and Appendixes to those pleadings of the defendants.

53.

As to Intervener's Appendix I, defendants allege as follows:

1. Referring to the allegations relating to Parker Dam (Pet. p. 45), defendants allege further that said dam was constructed by the United States with funds advanced to it by The Metropolitan Water District of Southern California, without reimbursement. The United States reserved the right to one-half the power privilege created by said dam. The facts with respect to Parker Dam are alleged with more particularity in Exhibit A to Defendants' Answer to Arizona's Bill of Complaint.

2. Referring to the allegations relating to the All-American Canal System, which includes the Coachella Canal (Pet. pp. 47 to 49, incl.), defendants allege that pursuant to contract dated December 1, 1932 (Appendix 13) as supplemented by contract dated March 4, 1952, entered into between the United States and Imperial Irrigation District (Appendix 18), Imperial Irrigation District has assumed the care, operation and maintenance of the main All-American Canal and the upper fifty miles of the Coachella Canal, and that the care, operation and maintenance of the remaining distance of the Coachella Canal has been assumed by the Coachella Valley County Water District pursuant to a contract entered into between the United States and that district dated October 15, 1934 (Appendix 16.)

3. Referring to the allegations relating to the area irrigated within the boundaries of Imperial Irrigation District (Pet. p. 49), defendants allege the fact to be that in the year 1951, the gross area irrigated amounted to approximately 600,000 acres of land and not 425,000 acres as therein stated.

4. Referring to the allegations relating to the Colorado River Aqueduct (Pet. p. 49), defendants allege the fact to be that the Colorado River Aqueduct will have a maximum carrying capacity of 1800 c.f.s. and not 1605 c.f.s. as therein stated.

5. Referring to the allegations relating to the San Diego Aqueduct (Pet. p. 50), defendants allege the facts to be that the San Diego Aqueduct is operated and maintained in part by the San Diego County Water Authority and in part by the Metropolitan Water District of Southern California and these agencies are sharing in repayment to the United States of the entire cost of said aqueduct.

54.

Prayer.

Wherefore, defendants pray:

1. That the rights and interests of defendants as against all parties to this cause, including the United States of America, be adjudged and decreed, as alleged herein;

2. That the Court grant to defendants such other and further relief as to the Court may seem meet and proper;

3. That in consequence of the disagreement of the parties on complex questions of fact and law, this Court appoint some suitable person as Special Master and refer this cause to such Special Master with authority to take evidence and to report the same to the Court with his findings of fact, conclusions of law and recommendations for decree, all to be subject to review and approval or other disposal by this Court.

The defendants also respectfully pray leave to amend this Answer if that should hereafter become appropriate or necessary during the course of the proceedings in this cause.

Respectfully submitted,

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EXHIBIT A.

Summary of the Controversy

The pleadings filed by Arizona, Nevada, the United States and California, to date, disclose complex questions of fact and law, many of which are interrelated. The summary of principal questions presented below is divided into four parts: (I) the quantities of water in controversy; (II) the ultimate issues, from the standpoint of the respective prayers; (III) a tabulation of factual issues; and (IV) the issues of interpretation of the basic documents involved. Under this division, certain questions reappear and to this extent reflect the interlocking nature of the problem.

I. The Quantities of Water in Controversy.

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by

"diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colorado River Compact and 962,000 acre-feet per annum of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diversions less returns to the river," or to about 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues.

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-

called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.*, with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife, flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to

this cause" for these functions. such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of: questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Compact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River,

and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use under its government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to

in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as these contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the waters referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree:

(1) Quieting title to 539,100 acre feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2) Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3) Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues.

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wild life, and (d) the other claims which it makes;

(4) the quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method, and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty.

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact, as California contends; by what

process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the main stream and tributaries; the date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, *i.e.*, "rights which may now exist"; whether Indian rights and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consumptive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus waters unapportioned by the Compact, as Cali-

fornia contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this court in Arizona v. California *et al.*, 292 U. S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of

the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: whether, if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact, the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-Indian users under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden; and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.*, 1922, 1929, or some other date; the definition

of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when present "perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six-State Compact remains in effect; if it does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre-feet of III(a) waters) of one-half of the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess

or surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.

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IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

Response of California Defendants to the Motion on Behalf of the State of Nevada for Leave to Intervene

and

Answer of California Defendants to Petition of Intervention on Behalf of the State of Nevada.

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OUTLINE OF ANSWER

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First Affirmative Defense—Defendants have the right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of waters of the Colorado River System under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Contracts of the Secretary of the Interior executed pursuant thereto 4

Second Affirmative Defense—Defendants have appropriative rights, recognized by the Boulder Canyon Project Act and protected by the Statutory Compact between the United States and California, to the beneficial consumptive use in California of not less than 5,362,000 acre-feet of Colorado River System water per annum, senior to the claims made by Nevada in that State's Petition of Intervention, with certain exceptions 5

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IN THE

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STATE OF ARIZONA,

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

RESPONSE OF CALIFORNIA DEFENDANTS TO THE MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE.

The defendants above named have no objection to the granting of the motion on behalf of the State of Nevada for leave to intervene.

The defendants note that the motion and Petition refer to the "Colorado River" in some instances and to the "Colorado River System" in others. It is assumed, in this Response and in the accompanying Answer, that the Colorado River System is meant by the references to the Colorado River.

The signatures on behalf of the defendants appear at the close of their Answer.

IN THE

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA.

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, City of Los Angeles, California, City of San Diego, California, and County of San Diego, California, by their duly authorized attorneys, jointly Answer the Petition of Intervention on Behalf of the State of Nevada as follows:

Incorporation of Appendixes by Reference.

1.

Defendants refer to their "Appendixes to the Answer" to Arizona's Bill of Complaint, and incorporate those Appendixes by reference as a part of their present Answer to the Petition of Intervention on Behalf of the State of Nevada, as though the same were here set out at length.

FIRST AFFIRMATIVE DEFENSE.

Defendants Have the Right to the Beneficial Consumptive Use in California of 5,362,000 Acre-feet Per Annum of Waters of the Colorado River System Under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact Between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto.

2.

The defendants incorporate by reference, as though here fully stated at length, as a part of this Answer to the Petition of Intervention of the State of Nevada, all of the allegations of the First Affirmative Defense of their Answer to the Petition for Intervention of the United States of America.

3.

The rights of Nevada as a third party beneficiary of the Statutory Compact between the United States and California are governed by that Compact as interpreted, construed and applied by the principal parties thereto, as alleged in Defendants' Answer to the Petition for Intervention of the United States, and said State cannot lawfully assert rights inconsistent therewith.

SECOND AFFIRMATIVE DEFENSE.

Defendants Have Appropriative Rights, Recognized by the Boulder Canyon Project Act and Protected by the Statutory Compact Between the United States and California, to the Beneficial Consumptive Use in California of Not Less Than 5,362,000 Acre-feet of Colorado River System Water Per Annum, Senior to the Claims Made by Nevada in that State's Petition of Intervention, With Certain Exceptions.

4.

Incorporation by Reference.

The defendants incorporate by reference, as though here fully stated at length, as a part of this Answer to the Petition of Intervention on Behalf of the State of Nevada, all of the allegations of the Second Affirmative Defense contained in the Answer of these defendants to the Petition for Intervention of the United States of America.

5.

California's Appropriations Are Senior to Nevada's.

All of the appropriations of defendants above alleged are senior in time and right to all claims of Nevada for the consumptive use of waters of the Colorado River System with the partial exception of certain beneficial consumptive uses which may have been initiated by users in Nevada prior to one or more of the dates of the initiation of defendants' appropriative rights. The exact quantities of such uses are unknown to the defendants, but, upon information and belief, defendants allege that the quantities thereof are not sufficient to interfere with the fulfillment of the appropriative rights of the defendants as such rights are recognized by the Boulder Canyon Project Act and the Statutory Compact between the United States and California.

TRAVERSE.

6.

Answering Paragraph I of said Petition, admit the allegations of said paragraph except that, with respect to the allegations contained in the last subparagraph thereof, allege that defendants have not sufficient information or belief to enable them to answer.

7.

The allegations of Paragraph II of said Petition do not appear to require answer by the defendants.

8.

Answering Paragraph III of said Petition, admit all the allegations thereof.

9.

Answering Paragraph IV of said Petition, admit that the State of Nevada is a signatory State of the Colorado River Compact and is one of the States of the Lower Basin thereunder. As to beneficial consumptive use of waters of the Colorado River System available to Nevada, reference is made to Paragraphs 12, 13 and 14 of this Answer. Admit that the Colorado River Compact, proclaimed by the President June 25, 1929, as a Six-State Compact among the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming as alleged in Paragraphs III and IV of Nevada's Motion for Leave to Intervene, was intended to be, and now is, binding and obligatory upon the said six States, and will be so until the said Compact is terminated by the unanimous

agreement of said six States. Except as specifically admitted herein, deny all allegations of Paragraph IV.

10.

Answering Paragraph V of said Petition, admit all the allegations thereof except that, with respect to the allegation that the State of Nevada has the right to the beneficial consumptive use of water under Article III(a) of the Colorado River Compact in the amount of 539,100 acre-feet per annum for present and future agricultural and domestic uses, allege that defendants are without information or belief sufficient to enable them to answer, and placing their denial upon that ground, deny said allegation. The defendants' position as to the rights of Nevada is stated in more detail in Paragraphs 12, 13 and 14 of this Answer.

11.

(a) Answering Paragraph VI(a) of said Petition, defendants admit the allegations contained in the first sentence thereof and allege that the facts therein stated are true of each Lower Basin State. Defendants are without information or belief as to the other allegations contained in said Paragraph VI(a), and placing their denial on that ground, deny said allegations.

(b) Answering Paragraph VI(b) of said Petition, defendants are without information or belief as to the allegations therein contained, and placing their denial on that ground, deny the allegations therein contained.

(c) Answering Paragraph VI(c) of said Petition, admit that the total present beneficial consumptive use (di-

versions less returns to the river) of water by the State of Nevada, measured at the place of use, does not exceed 63,730 acre-feet per annum as set forth in the table on page 12 of said Petition; except as expressly admitted, defendants are without information or belief as to the allegations contained in said Paragraph VI(c), including the tabulations appearing therein, and placing their denial on that ground, deny all other allegations of said paragraph.

12.

Answering Paragraph VII of said Petition:

(a) Deny, except as herein expressly admitted or alleged, all of the allegations of said paragraph.

(b) Allege that California has the right to make aggregate annual beneficial consumptive use in California, presently and permanently, of not to exceed 4,400,000 acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus one-half of all excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact, including in said excess or surplus the waters referred to in Article III(b) of said Compact. Allege that the quantities of excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact are such that the portion thereof which is now available and will continue to be available to California under its Statutory Compact with the United States for beneficial consumptive use in California is not less than one million acre-feet per annum.

(c) Admit that Arizona claims the right to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters referred to in Paragraphs (a) and (b) of

Article III of the Colorado River Compact. Allege that the claim of Arizona to 3,800,000 acre-feet of beneficial consumptive use per annum of the waters of the Colorado River System, measured in terms of "main stream depletion," is equivalent to more than 5,000,000 acre-feet measured at the place of use in terms of diversions less returns to the river.

(d) Admit that the Colorado River Compact apportioned to no Lower Basin State any definite amount of water. Admit that nothing in said Compact denies Nevada the right to the beneficial consumptive use of more than 300,000 acre-feet of water, and allege that nothing in said Compact or in any agreement to which California is a party confirms or concedes to Nevada the right to the use of said quantity or any other specific quantity.

(e) Allege that there is available to Arizona, Nevada, Utah and New Mexico in the aggregate the beneficial consumptive use in the Lower Basin of 3,100,000 acre-feet per annum of the waters of the Colorado River System, apportioned by Article III(a) of the Colorado River Compact, including, among others, the waters of the Gila River and its tributaries, plus one-half of the excess or surplus waters unapportioned by Article III(a) of that Compact, including in such excess or surplus waters unapportioned by Article III(a) of said Compact the increase of use permitted to the Lower Basin by Article III(b) of the Compact, said aggregate being subject to an undetermined deduction on account of reservoir and other losses, and such deductions as may be required in consequence of the Mexican Water Treaty. Allege that, of the beneficial consumptive use of water available in the aggregate to said four States of Nevada, Arizona,

Utah, and New Mexico, the share of each class which may be available to Nevada and the shares of each class which may be severally available to the other said States, have not been determined.

13.

Answering the allegations of Paragraph VIII of said Petition:

(a) Deny, except as herein expressly admitted or alleged, all of the allegations of said paragraph.

(b) Admit the allegations contained in the first sentence thereof.

(c) Allege that when, as and if the aggregate rights to the annual beneficial consumptive use in the Lower Basin exceed 7,500,000 acre-feet of water of the Colorado River System in any year, the first million acre-feet per annum of additional rights to the beneficial consumptive use in the Lower Basin in said year, wherever they may occur or be applicable, constitute rights to such use of water accruing to the Lower Basin states under Article III(b) of the Colorado River Compact, without further agreement or concerted action among the States of the Lower Basin.

(d) Allege that the right of the defendants to the beneficial consumptive use of water under the provisions of Article III(b) of the Colorado River Compact is established by the provisions of the Statutory Compact between the United States and California and the contracts of the defendants executed in accordance therewith and the appropriations of the defendants, as being a present and permanent right to the use of part of the excess and surplus referred to therein, if physically available.

14.

Answering the allegations of Paragraph IX of said Petition:

(a) Admit the allegations in the first sentence of said paragraph. Deny every other allegation of said paragraph except as such allegations conform to the allegations of Paragraphs 12 and 13 of this Answer.

(b) Allege that the share of all waters which may be available to Nevada cannot lawfully impair the rights of California under its Statutory Compact with the United States and contracts with California agencies made thereunder, as set out in Paragraph 34 of Defendants' Answer to Arizona's Bill of Complaint herein.

15.

Answering Paragraph X of said Petition:

(a) Deny all of the allegations of said paragraph except insofar as herein expressly admitted. Allege that the text of the California Limitation Act is fully set forth in Appendix 3.

(b) Deny that Article III(b) of the Colorado River Compact constitutes an apportionment of water to the Lower Basin, and allege that the uses of the waters referred to in said Article III(b) are unapportioned by the Colorado River Compact.

(c) Allege that the intent of the Congress and of the legislature of California in the enactment of the Statutory Compact between the United States and California was to make the waters referred to in Article III(b) of the Colorado River Compact available for use by California as a part of the excess or surplus waters the use of which is unapportioned by the Colorado River Compact,

and that Nevada, as a third party beneficiary of the Statutory Compact, is bound by the meaning thereof as so construed and applied by the principal parties thereto, to-wit, the United States and California, as alleged in the First Affirmative Defense of the Answer of Defendants to the Petition for Intervention of the United States.

16.

Answering Paragraph XI of said Petition, admit and allege as follows:

(a) Admit and allege that Section 4(a), Paragraph 1, of the Boulder Canyon Project Act offered a Statutory Compact to California, which California accepted, as described in Paragraph 6 of Defendants' Answer to the Petition for Intervention on Behalf of the United States. Admit that no specific mention is made in said Paragraph 1 of the waters referred to in Article III(b) of the Colorado River Compact, but allege that they are encompassed in the expression therein used, "excess or surplus waters unapportioned by" the Colorado River Compact.

(b) Admit that Section 4(a), Paragraph 2, of the Boulder Canyon Project Act consented to a proposed compact among Arizona, California and Nevada, but allege that Section 8(b) of said Act provided that if such compact should be entered into subsequent to January 1, 1929, it should require the further approval and consent of the Congress and should be subject to all contracts into which the Secretary of the Interior might have entered pursuant to Section 5 of the Project Act prior to the date of such approval and consent. Admit and allege that the language of the compact proposed in said Paragraph 2 of Section 4(a) made no mention of water

for California, Utah, or New Mexico, and like the first paragraph of that section, made no mention of the waters referred to in Article III(b) of the Colorado River Compact, except as the same are encompassed in the expression "excess or surplus waters unapportioned by the Colorado River compact," which appears in the second paragraph of Section 4(a) as in the first. Admit that the compact so conditionally authorized was directed to be subject to the Colorado River Compact.

(c) Admit that the compact proposed in the second paragraph of Section 4(a) was never entered into nor ratified by any State, and does not bind any State in any manner. Allege that in 1939 Arizona enacted a conditional ratification thereof which materially amended its language, to Arizona's advantage (see Defendants' Rejoinder to Arizona's Reply, Paragraph 2), and that no State has accepted Arizona's proposed amendment.

(d) Admit that any apportionment of water proposed in said Section 4(a), Paragraph 2, to be made to the States of Arizona and Nevada has never been consented to nor agreed to by the State of Nevada, and allege that no such apportionment to Arizona or Nevada had been agreed to by California.

17.

Answering the allegations of Paragraph XII of said Petition:

(a) Admit the allegations of Nevada contained in the first subparagraph thereof.

(b) Allege that the defendants have not sufficient information or belief to enable them to answer the second subparagraph thereof, and, basing their denial on that ground, deny the allegations therein.

18.

Answering Paragraph XIII of said Petition:

(a) Paragraph XIII(a) of said Petition does not appear to require answer by these defendants.

(b) Answering Paragraph XIII(b), deny the allegations therein contained except that defendants allege that the share of California in the waters referred to in Article III(b) of the Colorado River Compact has been determined by the Statutory Compact between the United States and California to which Arizona, Nevada, New Mexico and Utah have assented and that said waters are a portion of the excess or surplus waters the use of which is unapportioned by the Colorado River Compact.

19.

(a) Answering the allegations of Paragraph XIV of said Petition, deny, except as herein admitted or alleged, all the allegations of said paragraph.

(b) Admit that there is available to Arizona, Nevada, New Mexico and Utah the beneficial consumptive use of 3,100,000 acre-feet per annum of the uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact. As to the allegation that Nevada is entitled to the quantity of 539,100 acre-feet of water per annum apportioned to the Lower Basin by Article III(a) of the Compact, defendants allege that they have not sufficient information or belief to enable them to answer and, placing their denial on that ground, deny said allegation, and allege that the share which may be available for beneficial consumptive use in Nevada has not been determined. Such share is subject to the Statutory Compact between the United States and California and fur-

ther subject to all intervening rights since June 25, 1929, the effective date of the Statutory Compact and the Boulder Canyon Project Act.

(c) Admit that the beneficial consumptive uses of the waters of the Gila River and its tributaries in Arizona are to be charged to Arizona's uses in the Lower Basin under Article III(a) of the Colorado River Compact.

(d) Allege that California is entitled to the beneficial consumptive use of one-half of the excess or surplus waters unapportioned by Article III(a) of said Compact, including therein the uses referred to in Article III(b) of said Compact, and that there is available to the States of Arizona, Nevada, Utah and New Mexico, in the aggregate, the beneficial consumptive use of waters of the Colorado River System to the extent and in the manner described in Paragraphs 12 and 13 of this Answer, and not otherwise, and that the share thereof available to Nevada has not been determined except as affected by the provisions of the Statutory Compact between the United States and California.

20.

Answering the allegations contained in Paragraph XV of said Petition, admit all of said allegations.

21.

Answering the allegations contained in Paragraph XVI of said Petition, admit all of the allegations of said paragraph not herein denied. Deny the rights of Nevada in 3,800,000 acre-feet of water or any other quantity are as set forth in the Petition of Intervention of Nevada, and allege that the rights of Nevada are as set forth in Paragraphs 12, 13 and 14 of this Answer.

22.

Paragraph XVII of said Petition does not appear to require answer by these defendants.

23.

Answering Paragraph XVIII of said Petition, deny that the question in this controversy or their effect, measured in acre-feet per annum, are fully or accurately stated therein, and allege that the controversy, as developed in the pleadings to date, is summarized in Exhibit "A" annexed to Defendants' Answer to the Petition of Intervention on Behalf of the United States, and herein incorporated by reference as though fully stated.

24.

Paragraph XIX of said Petition does not appear to require answer by these defendants.

25.

(a) Paragraph XX(a) of said Petition does not appear to require answer by these defendants. The rights asserted by the defendants under the Statutory Compact between the United States and California are stated in Paragraph 27 of their Answer to Arizona's Bill of Complaint and Paragraph 6 of their Answer to the Petition for Intervention on Behalf of the United States.

(b) Paragraph XX(b) of said Petition does not appear to require answer by these defendants. Their position with respect to the status of the waters referred to in Article III(b) of the Colorado River Compact is stated in Paragraphs 12 and 13 of this Answer.

(c) Answering Paragraph XX(c) of said Petition, defendants allege that the right of Nevada to the waters of the Colorado River System not used by said State is

subject to intervening rights under the provisions of the Statutory Compact between the United States and California since June 25, 1929, the effective date thereof.

(d) Paragraph XX(d) of said Petition does not appear to require answer by these Defendants. Their rights to the use of waters in excess of or surplus to the uses apportioned by Article III(a) of the Colorado River Compact are stated in the First Affirmative Defense of their Answer to the Petition for Intervention of the United States, which is incorporated by reference in the First Affirmative Defense of this Answer.

26.

Answering the allegations of Paragraph XXI of said Petition, defendants admit that the economic interests of all the States of the Colorado River Basin are affected by this controversy.

27.

Paragraph XXII of said Petition does not appear to require answer by these defendants.

28.

Paragraph XXIII of said Petition does not appear to require answer by these defendants.

29.

Answering the allegations of Paragraph XXIV of said Petition:

(a) Admit the allegations contained in the first subparagraph thereof, and allege that the Compact referred to in Sections 8(a), 13(a), (b), (c) and (d) of the Boulder Canyon Project Act is the Six-State Compact proclaimed effective by the President June 25, 1929.

(b) Deny the allegations contained in the second subparagraph of Paragraph XXIV of said Petition, and allege that the rights of the defendants under their several contracts with the United States are as stated in the First Affirmative Defense of the Answer of these defendants to Arizona's Bill of Complaint and the First Affirmative Defense of their Answer to the Petition for Intervention of the United States.

(c) Admit the allegations, contained in the third subparagraph of Paragraph XXIV of said Petition, that Article III(a) of the Colorado River Compact makes no apportionment of any kind to any of the Lower Basin States and makes no apportionment whatever except as between the Upper and Lower Basin.

30.

Answering the allegations of Paragraph XXV of said Petition:

(a) Deny all of said allegations, and allege that the appropriative rights of each of the five States of the Lower Basin are material and relevant to the determination of their respective shares in the use of waters available to said five States in the aggregate.

(b) Allege that the rights of California to the use of the waters of the Colorado River System, to the extent that they constituted present perfected rights as of June 25, 1929, are within the protection of Article VIII of the Colorado River Compact, which provides that "present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact," and directs that such rights shall attach to and be satisfied from water that may be stored not in conflict with Article III; and within the protection of Section 6 of the

Boulder Canyon Project Act, which directs that the dam and reservoir provided for by Section 1 of said Act (Hoover Dam and reservoir) shall be used "first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power."

(c) Allege that the defendants as of June 25, 1929, were vested with valid appropriative rights as stated in the Third Affirmative Defense contained in the Answer of the defendants to the Bill of Complaint of Arizona and as summarized in Paragraph 46 of that Answer. Defendants incorporate by reference Paragraph 5 of the present Answer to Nevada's Petition of Intervention.

31.

Defendants deny all allegations contained in the Petition of Intervention of Nevada not specifically admitted in this Answer or which are at variance with the allegations contained in this Answer.

Prayer.

Wherefore, defendants pray:

1. That the rights and interests of defendants as against all parties to this cause be adjudged and decreed as alleged in their Answer to the Bill of Complaint of Arizona, in their Answer to the Petition of Intervention of the United States, and their Answer to the Petition of Intervention of the State of Nevada;

2. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

3. That in consequence of the disagreement of the parties on complex questions of fact and law; this Court appoint some suitable person as Special Master and refer this cause to such Special Master with authority to take evidence and to report the same to the Court with his findings of fact, conclusions of law and recommendations for decree, all to be subject to review and approval or other disposal by this Court.

The defendants also respectfully pray leave to amend this Answer if that should hereafter become appropriate or necessary in the course of the proceedings in this cause.

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No. 10 Original

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS;

UNITED STATES OF AMERICA, INTERVENER

MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE

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v.

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UNITED STATES OF AMERICA, INTERVENER

MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE

I. PLEADINGS FILED AND PENDING. PETITION FOR AUTHORIZATION TO FILE

On August 13, 1952, the State of Arizona filed its motion for leave to file its bill of complaint. Directly involved are the rights and interests of that State in the Colorado River System. Arizona's motion for leave to file was granted on January 19, 1953.[1] Likewise granted on that date was

[1] 344 U. S. 919 (1953).

the motion of the United States of America to intervene. Since January 19, 1953, the State of California and the other defendants have filed their answer to the bill of complaint; Arizona has replied to defendants' answer and a rejoinder to that reply has been filed by California and the other defendants. Arizona and those defendants have likewise answered the petition to intervene filed by the United States of America.

Presently pending before this Court is the motion of the State of Nevada for leave to intervene. To that motion the State of Arizona has filed its response, as has the State of California and the other named defendants.

Literally hundreds of pages of pleadings have now been filed together with a like number of pages of appendices to those pleadings.

II. BASIC ISSUES

Presented to this Court for resolution are far-reaching fundamental questions relating to the respective rights of the parties litigant in the Colorado River System. From the pleadings the broad scope of the long-standing controversy is manifest.

THE ISSUES PRESENTED BY THE STATE OF ARIZONA

In its bill of complaint the State of Arizona alludes to the controversy among the parties, "as to the interpretation, construction and application of the Colorado River Compact, the Boulder

Canyon Project Act, and the California Limitation Act," defining these three areas of conflict:

> (1) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?
>
> (2) How is beneficial consumptive use [as that term appears in the Colorado River Compact] to be measured?
>
> (3) How are evaporation losses from Lower Basin main stream storage reservoirs to be charged?

Having asserted its claimed rights to the use of water from the stream system in question, the "wrongful", adverse claims of the State of California and the other named defendants; its necessity to have its claimed rights defined and determined, the State of Arizona prays, among other things, that:

> Its title to the annual beneficial consumptive use of 3,800,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact be forever confirmed and quieted * * *

THE ISSUES PRESENTED BY THE STATE OF CALIFORNIA

To Arizona's bill of complaint the State of California and the other named defendants[3] made detailed answer, traversing the claims of Arizona and asserting affirmatively four defenses in which

[2] Arizona's Bill of Complaint.

[3] Hereafter referred to as the State of California or California.

are chronicled not only the historical background of the Colorado River Compact, but also the claimed rights to the use of water asserted by the several entities named defendants.

Transcendent over all other issues presented by the State of California are its contentions originally presented in its answer to the bill of complaint and reiterated in its answer to the petition of the United States of America, that:

> [1] The State of Arizona rejected the Seven-State Colorado River Compact; that the State of Arizona is not a party to the Colorado River Compact; that it is now precluded from urging the interpretations of that document as set forth in its bill of complaint.
>
> [2] The contracts between the United States of America and the named defendants are severally and collectively senior in time and right to any rights which may exist by virtue of contracts between the United States of America and any other parties for the delivery of water from Hoover Dam storage for use in the State of Arizona, subject to minor exceptions.[4]

In addition to the issues presented by and attendant upon the pleadings of California, gen-

[4] The United States of America has contracted for the delivery of water from the storage created by Hoover Dam, subject to specific terms and conditions, as follows: To certain named defendants 5,362,000 acre-feet each year; to the State of Arizona 2,800,000 acre-feet each year; to the State of Nevada 300,000 acre-feet each year.

erally alluded to above, it prays among other things in its response to the petition of the United States, that the rights and interests of defendants as against all parties to this cause, including the United States of America, be adjudged and decreed; for the appointment of a Special Master with authority to take evidence and to report to this Court findings of fact, conclusions of law and recommendations for a decree.

THE ISSUES PRESENTED BY THE UNITED STATES OF AMERICA

As an indispensable party to an adjudication by this Court of the controversy[5] between the State of Arizona and the State of California, the United States of America intervened. By that intervention the National Government seeks to have its rights determined and confirmed; its obligations and responsibilities ascertained and defined.

In connection with the vast Federal projects and developments in the Lower Basin of the Colorado River, the United States of America in its petition asserts rights to the use of the water in the Colorado River which will yield quantities of water sufficient to satisfy the maximum demands of those projects and developments which are described in its petition; it sets forth its international obligations arising from its Treaty with Mexico, its contractual obligations with the States and public corporations, its trusteeship in regard to the rights to the use of water

[5] *Arizona* v. *California*, 298 U. S. 558 (1936).

of the Indians and Indian tribes in the Lower Basin of the Colorado River.

Likewise asserted by the United States of America in its petition are the conflicts among the parties respecting the interpretation of the Colorado River Compact, the laws enacted in regard to it and the contracts entered into in contemplation of it. The United States of America then prays this Honorable Court to adjudge and declare the validity of the treaties, compacts, contracts and related laws; to interpret and construe those documents and to quiet its title to each and every right to the use of water claimed and exercised by it.

As there has been no disposition made of the motion of the State of Nevada for leave to file its petition in intervention, reference to the issues presented by that State will not be reviewed.

III. PRESENT NEED FOR CLARIFICATION OF ISSUES AND ISSUES WHICH SHOULD NOW BE RESOLVED

From the general statement set forth in the paragraphs which precede, the complexities of the litigation and the numerous issues presented are manifest. California in its answer to the petition of the United States of America has briefly outlined in its summary of the controversy the several aspects of the case as if perceives them. That summary does not purport, however, to be conclusive upon any of the parties, nor does it seek to encompass all of the issues.

Evidenced by that summarization is the present pressing need to delineate and to define the issues which are now presented with the end in view of proceeding at the earliest date possible to have this Court bring about a greatly needed resolution of this complex controversy for the benefit of all parties and the Nation as a whole.

Antecedent to any resolution of the many and varied issues in this action must be a determination of the two basic propositions advanced by the State of California. As shown above, California denies that the State of Arizona is a party to the Colorado River Compact. That issue transcends all others and should this Court accept California's position in regard to it, Arizona and all other parties to the cause would necessarily and drastically revise their pleadings and modify their claims. Eliminated by such a determination would be two of the principal questions concerning which the State of Arizona requests an adjudication. Similarly, the acceptance by this Court of California's contentions above set forth that its contracts severally and collectively are senior in time and right to any and all rights which may exist by virtue of contracts between the United States of America and other parties, would materially revise the course of the litigation changing the whole complexion of the position taken by the State of Arizona and the United States of America.

Attendant upon the two questions to which reference has been made are other issues which might well be resolved in advance of trial.

IV. REQUEST FOR PRE-TRIAL CONFERENCE

For these reasons, the United States of America respectfully requests the Court to order a pre-trial conference presided over by a member of this Court with counsel for all parties, for the purpose of securing simplification and clarification of the issues of law with the view of resolving in advance of any reference to the Special Master as has been prayed, those legal issues to which reference has been made, and such others as are susceptible of that disposition; of securing, if possible, agreement among the parties respecting facts concerning which there is no disagreement; considering the possibility of obtaining admissions respecting documentary evidence thus eliminating unnecessary proof, and otherwise to seek means to expedite a determination of the most appropriate course to pursue at this juncture of the proceding.

Respectfully submitted.

HERBERT BROWNELL, JR.
Attorney General.

MAY 1954.

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RESPONSE OF ARIZONA TO MEMORANDUM OF UNITED STATES OF AMERICA REQUESTING PRE-TRIAL CONFERENCE.

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Defendants

UNITED STATES OF AMERICA, INTERVENER.

RESPONSE OF ARIZONA TO MEMORANDUM OF UNITED STATES OF AMERICA REQUESTING PRE-TRIAL CONFERENCE.

In response to the memorandum requesting pre-trial conference, filed herein by the United States of America, Intervener, the State of Arizona, Complainant herein, submits the following:

I.

All the parties to this litigation have recognized that an early determination of the controversy involved is necessary before the full development of the Colorado River can be made and that such development is desirable and essential to the nation as a whole and particularly to the Southwest.

II.

All the parties to the controversy have for many years likewise recognized that there are certain fundamental legal questions relating to the rights of the respective parties which must be adjudicated. The parties, including the defendants, have also recognized at all times that if these basic legal questions were determined, all related questions would be greatly simplified. In many hearings held before congressional committees wherein these legal questions were discussed, the defendants on numerous occasions expressed the opinion that the adjudication of these legal questions would resolve the controversy, that such adjudication could be determined within a comparatively short space of time, and further pledged themselves to exert every effort to this end.[1]

III.

Careful control of the litigation from the outset by this Court for the purpose of simplifying, clarifying and appropriately resolving in advance the issues of law involved, and otherwise regulating the proceedings, will assure that the controversy will be handled in as orderly and expeditious a fashion as is possible and will eliminate unnecessary volume, delay, and expense. A pre-trial conference, or a series of pre-trial conferences, presided over by a member of this Court, with counsel for all parties, can best accomplish this end. Arizona is, therefore, in full accord with the request of the United States of America, Intervener, for a pre-trial conference and respectfully requests favorable consideration thereof by this Court.

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[1]Typical of such statements are:

Hearings before Subcommittee of the Committee on Interior and Insular Affairs, U. S. Senate, 80th Congress, 2nd Session, on S. J. Res. 145, pp. 35, 69, 105, 120, 497, 498; and 499.

Hearings before Subcommittee No. 4 of the Committee on Judiciary, House of Representatives, 80th Congress, 2nd Session, on H. J. Res. 225, 226, 227, 236, and H. R. 4097, pp. 5, 32, 93, and 94.

Hearings before the Committee on Interior and Insular Affairs, United States Senate, 81st Congress, 1st Session, on S. 75 and S. J. Res. 4, p. 915.

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UNITED STATES OF AMERICA, *Intervener.*

Memorandum of the California Defendants In Reply to Memorandum of the United States Requesting a Pre-Trial Conference

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OUTLINE

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I.	The California defendants have no objection to a pre-trial conference whenever such a conference will expedite the trial of the case. As now proposed, however, a pre-trial conference would delay, rather than expedite, the trial and final determination of this action	1
II.	A pre-trial conference would be premature until the Court has first determined what States shall be made parties to this cause	2
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IN THE

Supreme Court of the United States

October Term, 1953
No. 10 Original.

STATE OF ARIZONA, *Complainant*,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, *Defendants*.

UNITED STATES OF AMERICA, *Intervener*.

Memorandum of the California Defendants In Reply to Memorandum of the United States Requesting a Pre-Trial Conference

I

The California defendants have no objection to a pre-trial conference whenever such a conference will expedite

the trial of the case. As now proposed, however, a pre-trial conference would delay, rather than expedite, the trial and final determination of this action.

II

A pre-trial conference would be premature until the Court has first determined what States shall be made parties to this cause.

(a) Nevada has moved for leave to file a Petition of Intervention. California has filed a response stating that it has no objection to Nevada's intervention, and has filed its answer. Nevada's motion, in our view, is a proper one, and its petition shows that Nevada is an indispensable party. If Nevada's motion is granted, Arizona will presumably be required to answer, and Nevada may desire to reply. A pre-trial conference in advance of the determination of Nevada's right to participate in this cause, and in advance of the completion of the pleadings as among Nevada, Arizona and the United States, would be premature.

(b) If Nevada is permitted to intervene, it appears, from the allegations in Nevada's petition, that Utah and New Mexico are also indispensable parties as two Lower Basin States participating in a common "fund" of water available to the five Lower Basin States of Arizona, California, Nevada, Utah, and New Mexico. If so, what has been said above with respect to Nevada would apply to those two States.

(c) The Petition of Intervention of the United States brought issues into this case which may require for their final adjudication the presence of all seven States of the Colorado River Basin (Colorado and Wyoming, in addition to those previously named). These are omitted from the inventory of issues requiring early determination,

presented in the Government's memorandum. They include the claims of the United States for water, independently of the right of any State, for the use of Indians; to serve the Mexican Water Treaty; to supply reclamation and power projects; for navigation and flood control; for the support of fish and wildlife; for use on lands administered by various Government bureaus, etc.; the denial by the United States that all of its rights are subject to the Colorado River compact. In particular, its Indian claims and its claims for water to serve the Mexican Water Treaty directly involve the obligations of the four Upper Division States to release water at Lee Ferry.

(d) The interest of the four Upper Division States in certain issues involved in this suit is evidenced by a letter dated April 28, 1954, from their Governors to the Attorney General of the United States. As reported in the press (no copy was served on these defendants), these States have proposed to the Attorney General that five issues be determined in advance of trial of the present litigation. Manifestly, these States are interested not only in the proposition that their issues be answered; they are concerned with *how* they are answered.

(e) As appears hereafter, the pleadings disclose a number of issues which affect all seven States, in addition to those raised by the Government's petition and by the letter of the Upper Basin Governors dated April 28, 1954.

III

The subject matter advanced by the United States for preliminary consideration at the requested pre-trial conference would be productive of further delay.

(a) The United States memorandum states that there are two "transcendent" issues which should be deter-

mined in advance of full consideration of the case. While the issues so stated are important, it is the view of the California defendants that such issues and other issues involved in the litigation cannot be determined on the basis of the pleadings and those matters of which this Court takes judicial notice. The review of much factual data and evidence must precede the determination of the law applicable thereto. This is illustrated by the issue relating to the status of Arizona as a party to the Colorado River Compact. Such an issue involves not only the legislative record, but (related to the question of unreasonable delay on Arizona's part in acting on the Compact), the manner in which the situation of the parties had changed during the period between 1929, when the Six-State Compact became effective, and 1944, when Arizona purported to ratify it, and other factual events.*

(b) The second issue referred to as "transcendent" by the United States, i.e., the status of the California water contracts, requires consideration not only of the respective dates of the contracts involved, but the investments made, work done, and uses established thereunder. The extent to which California water delivery contracts perpetuate "present perfected rights" and "rights which may now exist" as required by the Colorado River Compact and the Boulder Canyon Project Act, depends on facts evidentiary in character. Other factual evidence will no doubt be required. A trial of issues of fact involved in the questions described as "transcendent" prior to a full trial of all issues would unreasonably and unnecessarily delay final determination of this controversy.

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* The Government's memorandum (p. 7) says that the determination of this issue would eliminate "two of the principal questions concerning which the State of Arizona requests an adjudication." These are not identified, and the statement appears erroneous.

IV

The "issues" suggested by the Government for determination prior to trial cannot be considered out of context with their relation to other issues of fact and of law of even more controlling effect on the case, some of them raised in the Government's own Petition of Intervention but ignored in its proposed agenda of issues to be determined in advance of trial.

The issues to date, as the California defendants see them, are stated in Exhibit A to their Answer to the Petition of Intervention of the United States. For convenient reference, this is reprinted as Exhibit A to this Memorandum, and is incorporated herein by reference.

V

It is respectfully suggested that the appointment of a Special Master precede the ordering of a pre-trial conference, and that such Special Master be present at such a conference, to be held after the necessary parties have been determined and after the pleadings occasioned by their participation have been completed.

Respectfully submitted,

(See next page for signatures)

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May 27, 1954

EXHIBIT A

Summary of the Controversy

The pleadings filed by Arizona, Nevada, the United States and California, to date, disclose complex questions of fact and law, many of which are interrelated. The summary of principal questions presented below is divided into four parts: (I) the quantities of water in controversy; (II) the ultimate issues, from the standpoint of the respective prayers; (III) a tabulation of factual issues; and (IV) the issues of interpretation of the basic documents involved. Under this division, certain questions reappear and to this extent reflect the interlocking nature of the problem.

I. The Quantities of Water in Controversy.

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by "diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colorado

River Compact and 962,000 acre-feet per annum of the excess or surplus water unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diversions less returns to the river," or to about 3,000,000

acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues.

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.*, with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife; flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to this cause" for these functions, such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of: questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Com-

pact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona* v. *California et al.*, 292 U. S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River, and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use under its government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water

and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes, or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as these contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of

4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves: the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations, in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the wafers referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree:

(1) Quieting title to 539,100 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2) Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article

III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3) Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum, from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues.

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wild life, and (d) the other claims which it makes;

(4) The quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method, and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in

California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty.

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact, as California contends; by what process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the

main stream and tributaries; the date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, *i.e.*, "rights which may now exist"; whether Indian rights, and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consumptive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus waters unapportioned by the Compact, as California contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this court in Arizona v. California *et al.*, 292 U. S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether

the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: Whether,

if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact, the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: Whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-Indian users

under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden; and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.*, 1922, 1929, or some other date; the definition of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when present "perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six-State Compact remains in effect; if it does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre-feet of III(a) waters) of one-half of the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess or

surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.

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No. 10, ORIGINAL

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In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS,

STATE OF NEVADA, INTERVENER.

REPLY OF THE STATE OF NEVADA TO ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

W. T. MATHEWS,
Attorney General of Nevada,
ALAN BIBLE,
Special Assistant Attorney General of Nevada,
WILLIAM J. KANE,
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Deputy Attorney General of Nevada,
WILLIAM N. DUNSEATH,
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JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

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In the Supreme Court of the United States

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No. 10, ORIGINAL

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA; PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS,

STATE OF NEVADA, INTERVENER.

REPLY OF THE STATE OF NEVADA TO ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

COMES NOW the State of Nevada and as and for its reply to the Answer of California Defendants, admits, denies and alleges as follows:

ANSWER TO FIRST AFFIRMATIVE DEFENSE

I

Answering the First Affirmative Defense of said defendants set forth on page 4 of said Answer, the State of Nevada denies that the defendants have the right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of waters of the Colorado River System under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Contracts of the Secretary of the

Interior, and, in this connection the State of Nevada realleges and reiterates the allegations set forth in the first two subparagraphs of Paragraph XXIV of its Petition of Intervention, and, in this connection the State of Nevada again denies that the excess and surplus waters referred to in Section 4 (a) of the Project Act and in Section 1 of the California Limitation Act includes water referred to and provided for in Article III (b) of the Colorado River Compact.

II

Answering Paragraph 2, page 4, of California's Answer, the State of Nevada admits that defendants have therein incorporated by reference as a part of its Answer hereto all of the allegations of their First Affirmative Defense of their Answer to Petition for Intervention of the United States of America, and in connection with said admission and in answer to the said First Affirmative Defense admits, denies and alleges, as follows:

(a) Answering Paragraphs 6 (a) and 6 (b) the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies all and singular the allegations therein contained, and in connection with such denial alleges the said "1,000,000 acre-feet of excess waters" per annum therein alleged did not nor do not constitute any of the water provided in and by Article III (b) of the Colorado River Compact. Said State further denies that the legislative history of the Project Act supports the positions taken with reference thereto by the defendants, save and except the said State admits that water in substantial quantities is essential to the economy of California and all the States in the Lower Basin.

(b) Answering Paragraph 6 (c) 1, the State of Nevada admits the allegations therein contained, save and except that it denies that the water provided in and by Article III (b) of the Colorado River Compact was included or can it legally be included in any excess or surplus waters unapportioned by Article III (a) of said Compact for use by defendants under contract with the United States or otherwise. Said State further denies that the quantities of water required

to serve the annual beneficial consumptive use in California, as alleged in Paragraph 6 (c) 2, includes in the excess or surplus waters the waters referred to in Article III (b) of said Compact.

(c) Answering Paragraph 6 (c) 3, the State of Nevada denies that the waters contracted to be delivered by the United States are available to serve all uses under contracts made under provisions of the Project Act for the supply of any rights which existed in California as of June 25, 1929, and alleges that such waters were and are available for said purpose only to rights in existence November 24, 1922.

(d) Answering Paragraph 7, the State of Nevada here refers to Paragraph III post, of this Reply.

(e) Answering Paragraph 8 (a), the State of Nevada admits all and singular the allegations therein contained, save and except said State denies that the Secretary of the Interior was possessed with the power to include in said regulation waters provided in Article III (b) of the Colorado River Compact.

(f) Answering Paragraph 8 (c), the State of Nevada alleges that the said 962,000 acre-feet per annum alleged to be excess and surplus within the meaning of the Statutory Compact do not and cannot legally include therein the waters provided in Article III (b) of the Colorado River Compact.

(g) Answering Paragraph 8 (d), the State of Nevada denies that there was and is inherent in said water delivery contracts the right to the present and permanent use of excess and surplus waters, if such waters are physically available.

(h) Answering Paragraph 9 (h), the State of Nevada here refers to Paragraph III post of this Reply.

(i) Answering Paragraph 10, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief therefore denies the allegations therein contained; further answering that part of said Paragraph 10 contained in footnote 4, page 25 of said Answer, the said State denies that any part of the revenues derived from power rates has been, is or will be paid to Nevada in lieu of taxes.

Further answering said Note 4 of said paragraph, Nevada alleges that it has contracted for, withdrawn and paid for all of the firm energy to which it is entitled under so-called Boulder Dam Contracts.

(j) Answering Paragraph 12 (c), the State of Nevada denies that there are available for storage by the United States for permanent service, and for receipt and beneficial consumptive use by defendants, without violating the Colorado River Compact or the Boulder Canyon Project Act or the said Statutory Compact, quantities of water equal to said alleged amount of 5,362,000 acre-feet.

(k) Answering Paragraph 12 (d), the State of Nevada denies all and singular the allegations contained therein.

III

Answering Paragraph 3, page 4, of California's Answer, the State of Nevada, as a signatory State to the Colorado River Compact, denies that its rights as a third-party beneficiary, or otherwise, of the alleged Statutory Compact between the United States and California are governed by said Compact as interpreted, construed and applied by the principal parties thereto, and in connection with said denial alleges that it is entitled to seek and have a judicial interpretation thereof; the State of Nevada further denies that it cannot lawfully assert rights inconsistent with the interpretation of the said principal parties.

ANSWER TO SECOND AFFIRMATIVE DEFENSE

IV

Answering the Second Affirmative Defense of said defendants set forth on page 5 of said Answer, the State of Nevada denies that the defendants have appropriative rights, recognized by the Boulder Canyon Project Act, and protected by the Statutory Compact between the United States and California, to the beneficial consumptive use in California of not less than 5,362,000 acre-feet of Colorado River System water per annum, senior to the claims made by Nevada in Nevada's Petition of Intervention.

V

Answering Paragraph 4 of California's Answer, the State of Nevada admits that defendants have therein incorporated by reference as a part of its Answer hereto all of the allegations of their Second Affirmative Defense of their Answer to Petition for Intervention of the United States of America, and in connection with said admission and in answer to said Second Affirmative Defense admits, denies and alleges, as follows:

(a) Answering Paragraphs 15 (a) (b) (c) the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies all and singular the allegations therein contained.

(b) Answering Paragraph 16, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies all and singular the allegations therein contained.

(c) Answering Paragraphs 17 (a) (b), the State of Nevada admits all and singular the allegations therein contained; further answering Paragraphs 17 (c) (d), the State of Nevada denies all and singular the allegations therein contained.

(d) Answering Paragraph 18, the State of Nevada denies all and singular the allegations therein contained.

VI

Answering Paragraph 5, page 5, of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

TRAVERSE.

VII

Answering Paragraph 12 (b) of California's Answer, the State of Nevada denies that the quantities of excess or surplus waters unapportioned by Article III (a) of the Colorado River Compact alleged to be available and will continue to be available to California under its Statutory Compact with the United States or otherwise for beneficial consumptive use is and will be not less than one million acre-feet per annum.

(b) Answering Paragraph 12 (c) of California's Answer, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies that the beneficial consumptive use per annum of the waters of said River Stream System, as alleged, measured in terms of "main stream depletion" is equivalent to more than 5,000,000 acre-feet measured at place of use in terms of diversion less returns to the river.

VIII

Answering Paragraph 13 (d) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

IX

Answering Paragraph 14 (b) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

X

Answering Paragraph 15 (c) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

XI

Answering Paragraphs 16 (a) (b) of California's Answer, the State of Nevada denies that the waters provided in and by Article III (b) of the Colorado River Compact is encompassed in "excess or surplus waters," as alleged.

XII

Answering Paragraph 18 (b) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

XIII

Answering Paragraphs 19 (b) (d) of California's Answer, the State of Nevada denies that Nevada's share of the waters of the Colorado River Stream System is and/or will be subject to the Statutory Compact between the United States and California and further subject to all intervening rights since June 25, 1929.

XIV

Answering Paragraph 25 (c) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

XV

Answering Paragraph 30 (b) of California's Answer, the State of Nevada denies that the right of California to the use of the waters of the Colorado River System, to the extent that they constituted present perfected rights as of June 25, 1929.

PRAYER

WHEREFORE, the State of Nevada reiterates its Prayer set forth in its Petition of Intervention heretofore filed in the cause.

W. T. MATHEWS,
Attorney General of Nevada,

ALAN BIBLE,
Special Assistant Attorney General of Nevada,

WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,

GEO. P. ANNAND,
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Filed June 1, 1959

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STATE OF ARIZONA, COMPLAINANT,

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS,

STATE OF NEVADA, INTERVENER.

MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE

PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

W. T. MATHEWS,
Attorney General of Nevada,
ALAN BIBLE,
Special Assistant Attorney General of Nevada,
WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,
GEO. P. ANNAND,
Deputy Attorney General of Nevada,
WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada,
JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

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In the Supreme Court of the United States

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STATE OF NEVADA, INTERVENER.

MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE

COMES NOW the Attorney General and the Special Assistant Attorneys General of the State of Nevada and for and in behalf of said State thereunto authorized and directed by the Act of the Legislature entitled, "An Act authorizing and directing the attorney general of the State of Nevada to intervene in the suit of the State of Arizona against the State of California relative to the rights to the waters of the Colorado river pending in the supreme court of the United States, providing additional legal counsel and assistance, and making an appropriation therefor," approved March 25, 1953, and thereunto directed by the Governor of Nevada, and respectfully move this Court for leave to intervene in the above-entitled cause, and for leave to file a petition for intervention therein.

I

The State of Nevada is one of the original signers of the Colorado River Compact formulated and signed by the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, November 24, 1922, and by reason thereof became entitled to and is now entitled to an allocation of a portion of the waters of the Colorado River agreed upon in said Compact to be allocated to the Lower Basin States.

II

The Complaint of Arizona, the Answer of California and the Reply of Arizona discloses that the paramount issue in the action is the right of each said State to the use of the waters of the Colorado River, in brief, that an adjudication of such rights is and will be necessary to the final determination thereof, in that each said State seeks to have the rights which it claims in the Colorado River quieted as against the other.

III

The State of Nevada being one of the signatory States in and to the Colorado River Compact, which the Legislature of Nevada ratified January 27, 1923, in that certain resolution entitled, "Assembly Joint Resolution, relative to approving Colorado river compact," Statutes 1923, page 393, as a Seven-State Compact, and thereafter on March 18, 1925, in and by Chapter 96, Statutes 1925, ratified said Compact as a Six-State Compact and by reason of said ratifications became entitled to and is now entitled to have and to use as a matter of right its just and equitable share of the waters of said river.

IV

The State of Nevada in and by that certain Act of its Legislature entitled, "An Act relating to the Colorado river compact; waiving certain provisions of article XI thereof; agreeing to and entering into said Colorado river compact as so modified, and providing for the ratification and going into effect of said compact as so modified," approved March 18, 1925, and being Chapter 96, Statutes of

Nevada, 1925, thereby waived the provisions of the first paragraph of Article XI of the Colorado River Compact making it effective where ratified by each of the signatory States, and then and there agreeing that said Compact shall become binding when ratified by six of the signatory States and the Congress of the United States shall have given its consent thereto. Thereafter the Congress of the United States enacted the Boulder Canyon Project Act, approved December 21, 1928, 45 U. S. Statutes, page 57, and therein included Section 13(a), providing as follows:

> The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

That thereafter on June 25, 1929, the President of the United States in Public Proclamation No. 1882, 46 U. S. Statutes 3000, declared that all conditions of the Boulder Canyon Project Act, including the conditions provided in Section 4(a) thereof, having been fulfilled, that said Act was then and there effective as of that date.

That from and after the 25th day of June, 1929, the State of

Nevada became entitled to its just and equitable portion and share of the waters of the Colorado River.

V

The State of Nevada is presently under a contract with the United States, dated January 3, 1944, amending a prior contract dated March 30, 1942, whereby the United States shall, from storage in Lake Mead, and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, deliver to the State each year not to exceed three hundred thousand (300,000) acre-feet of water, inclusiye of all other waters diverted for use within the State from the Colorado River Stream System. That neither the said contract with the United States of June 30, 1942, nor the contract of January 3, 1944, contains any limitation whereby the right of the State of Nevada to contract for the delivery of additional water over and above three hundred thousand (300,000) acre-feet, and neither is said State by reason of said contracts prohibited from asserting claims to the right to use of the waters of the Colorado River Stream System over and above three hundred thousand (300,000) acre-feet of water.

Therefore, the State of Nevada, applicant for intervention herein, respectfully moves the Court for leave to intervene in the action and to file therein its petition of intervention hereunto annexed, upon the following grounds:

1. That the representation of the applicant's interest by the existing parties is or may be inadequate and that the applicant is or may be bound by the judgment entered in the suit.

2. That the applicant is so situated as to be adversely affected by the final distribution of the waters of the Colorado River Stream System.

3. That the applicant's interest and the main action have questions of law and fact in common, and that its inter-

vention will not to any extent delay or prejudice the rights of the original parties.

W. T. MATHEWS,
Attorney General of Nevada,

ALAN BIBLE,
Special Assistant Attorney General of Nevada,

WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,

GEO. P. ANNAND,
Deputy Attorney General of Nevada,

WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada,

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STATE OF NEVADA, INTERVENER.

PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

The State of Nevada, by W. T. MATHEWS, the ATTORNEY GENERAL of the STATE OF NEVADA, and by leave of Court first had and obtained, files this Petition of Intervention in the above-entitled cause, and alleges and states as follows:

PART ONE: INTRODUCTION

I

The State of Nevada refers to the several introductory statements of the States of Arizona and California and the United States of America covering the factual and historical background of the development of the Colorado River System and the basic causes of this controversy. This State deems it unnecessary to repeat the same except to state the rights and interests of Nevada in this cause. All

the parties agree that this is a controversy of considerable magnitude, affecting vast areas of land, many millions of dollars of investments growing out of the development of the Colorado River and the present and future interests of millions of people within the areas of the States concerned.

Under Article I of the Colorado River Compact the major purposes of the Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Nevada is an arid State, particularly in that part of the State which lies within the limits of the Colorado River System or adjacent thereto. The economic life of Nevada depends upon the careful use of stored waters and controlled rivers or streams to sustain its agricultural and industrial development. In addition to the physical use of water there is an equally imperative need for a determination of the definite legal right to the use of water to secure present rights and insure future developments.

With the advent of World War II, the industrial growth of Southern Nevada began, and its future expansion is important to this State and the Nation as a whole. It is strategically located and with ample power and water available the progress of industrial expansion, particularly in the processing of minerals, should be continued. The City of Henderson, Nevada, is the site of vast industrial plants located eighteen miles from Hoover Dam and nine miles from Lake Mead, costing over one hundred and forty million dollars. These plants with waterways and waterworks and townsite have been carefully preserved by Nevada since World War II and

are now operated by private industry and are the center of a thriving community with extensive future possibilities as an industrial area. The increase in population of Las Vegas, Nevada, the county seat of Clark County, has been steady and substantial and during the past three years is conservatively estimated at thirty-five percent. There are many thousands of acres of irrigable land in the Colorado River Basin area to be developed into profitable agricultural communities.

Note. The State of Nevada, in this petition and future pleadings, refers to and includes all the defendants under the designation California.

Note. The State of Nevada refers to the various appendixes of the States of Arizona and California and the United States of America to their pleadings on file herein and respectfully submits that the same are adequate to apprise the Court of the contents of the basic documents upon which this case is predicated.

PART TWO: THE RIGHTS AND INTERESTS OF THE STATE OF NEVADA IN AND TO THE WATERS OF THE COLORADO RIVER SYSTEM

II

The State of Nevada acts by and through the Colorado River Commission of Nevada, an official State agency created by statute and charged with the duty to receive, protect and safeguard, and hold in trust for the State of Nevada all water and water rights, interests or benefits in and to the waters of the Colorado River, and by and through the Attorney General of the State of Nevada as authorized and directed by the Act of the Nevada Legislature entitled, "An Act authorizing and directing the attorney general of the State of Nevada to intervene in the suit of the State of Arizona against the State of California relative to the rights to the waters of the Colorado River pending in the supreme court of the United States, providing additional legal counsel and assistance, and making an appropriation therefor," approved March 25, 1953, the same being Chapter 214, page 267, Statutes of Nevada, 1953.

III

The State of Arizona, by leave of this Court, filed herein its Bill of Complaint against the State of California and certain entities of that State, wherein an adjudication of the rights of Arizona and California in and to the waters of the Colorado River System are drawn in question; thereafter California filed an Answer to said Complaint, and Arizona filed its Reply thereto, California then filing its Rejoinder to said Reply; and by leave of this Court the United States was granted leave to intervene in this suit. The State of Nevada being a signatory to the Colorado River Compact, and being one of the Lower Basin States defined in said Compact and being a user of and entitled to the right to the beneficial consumptive use of a portion of the Colorado River System water is, by reasons thereof, an indispensable party to this suit and herein sets forth its claims therefor.

IV

The State of Nevada is a signatory State to the Colorado River Compact dated November 24, 1922, and a member State of the Lower Basin thereunder, and is entitled to its equitable share of the waters provided in Article III of said Compact. The State of Nevada alleges that the said Colorado River Compact as so adopted by the signatory States was intended to be and is now binding and obligatory upon each of them for the then and now indefinite future and until said Compact is terminated by the unanimous agreement of the signatory States.

V

That under Article III(a) of said Compact there is apportioned in perpetuity to the Lower Basin the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum. There is no apportionment of water under said Article III(a) to each of the several States of the Lower Basin. The State of Nevada has the right to the beneficial consumptive use of water under said Article III(a) of 539,100 acre-feet for present and future agricultural and domestic uses.

VI

(a) The State of Nevada reiterates that it is an arid State and alleges that water is the life blood of its agricultural, domestic, industrial and municipal economy, and that this is particularly true in the Colorado River Basin within said State. That within said Basin and susceptible of being irrigated by the waters of said river and tributaries are many thousands of acres of land in addition to land presently irrigated that can and will be made productive thereby; that during World War II large industrial plants employing several thousand employees were created and established by the United States in said Basin, near and adjacent to the City of Las Vegas, and that said industrial plants, since the termination of the war, have been taken over by private enterprises and the activities thereof expanded; that by reason of the establishment of the industries and the expansion thereof, increased need and use of water has been and is now imperative for the domestic use of the large increase in population thereby required, which said population in said area has increased at least thirty-five percent during the last three years.

(b) That a recent extensive engineering examination and study of the Colorado River Basin within the State of Nevada has been made and completed in the month of November 1953, for the purpose of determining the potential use of water therein through the future development of the Basin with respect to its agricultural, domestic, industrial and municipal necessities. That said examination and study projects the development of the area and the necessary use of water therefor in future to the year 2000, and determines that the amount of water necessary to insure the development of said area for the aforesaid purposes will be in the amount of not less than 539,100 acre-feet.

(c) That the separate respective areas in said Basin and the amounts of water necessary for the future development thereof are as follows:

LISTING AREAS WITHIN COLORADO RIVER DRAINAGE DEPENDENT SOLELY ON WATER FROM COLORADO RIVER AND TRIBUTARIES FOR DEVELOPMENT, AND SHOWING PRESENT USES, ESTIMATED INCREASE AND TOTAL USE OF WATER BY YEAR 2000.

Area No.[1]	Designation of Area	Water Use in Acre-Feet[2] Present use	Estimated additional use-year 2000	Total estimated use-year 2000
	COLORADO RIVER DIRECT			
12	Las Vegas Valley	[3]12,340	220,060	232,400
14	Big Bend	0	2,700	2,700
15	Fort Mohave	0	20,300	20,300
16	Dry Lake	0	115,800	115,800
	Boulder City	[4]2,600	2,400	5,000
	Subtotal	14,940	361,260	376,200
	VIRGIN RIVER			
1 & 2	Mesquite and Bunkerville	12,020	3,080	15,100
3 & 4	Below Riverside Bridge	1,700	8,300	10,000
17	Mormon Mesa	0	46,400	46,400
18	Toquop Wash	0	15,700	15,700
	Subtotal	13,270	73,480	87,200
	MUDDY RIVER			
6	Upper Moapa Valley	9,480	9,320	18,800
7	Lower Moapa Valley	14,890	6,110	21,000
	Subtotal	24,370	15,430	39,800
	MEADOW VALLEY WASH			
5	Lower Meadow Valley Wash	0	15,500	15,500
19	Upper Meadow Valley Wash	10,700	9,700	20,400
	Subtotal	10,700	25,200	35,900
	TOTAL, NEVADA	63,730	475,370	539,100

[1]Area numbers correspond to similar numbers appearing on map in Appendix "A."

[2]Water uses calculated above are based upon diversion less return flow.

[3]Indicates water presently being pumped from Lake Mead for industrial and municipal purposes at Henderson.

[4]Indicates water presently being pumped from Lake Mead for industrial and municipal use in Boulder City.

VII

The State of Nevada, signatory to the Colorado River Compact, Article III(a) and III(b) of which allocates to the Lower Basin States 8,500,000 acre-feet of water of said river, alleges; That it is informed and believes that California is presently claiming the right to use 5,362,000 acre-feet of water and the State of Arizona is presently claiming the right to use 3,800,000 acre-feet of said water; that Nevada alleges the States of Arizona and California concede Nevada has the right to the use of 300,000 acre-feet of said III(a) water per annum in perpetuity; that the Colorado River Compact apportioned to no Lower Basin State any definite amount of water and that nothing in said Compact denies Nevada the right to the beneficial consumptive use of more than said 300,000 acre-feet of water, nor does said Compact deny Nevada the right to the beneficial consumptive use of sufficient water to beneficially irrigate its lands and extend its domestic uses requiring waters far in excess of said 300,000 acre-feet; to-wit, the right to the beneficial consumptive use of 900,000 acre-feet of water per annum. The State of Nevada alleges that said 900,000 acre-feet of water consists of 539,100 acre-feet of the water apportioned to the Lower Basin in and by Article III(a) of the Colorado River Compact plus an equitable share in the water to be apportioned under Article III(b) and III(f) of the said Compact, all of which is more particularly set forth in this petition.

VIII

Article III(b) of said Compact provides that in addition to the apportionment of water in Article III(a) "the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum." No joint action by the Lower Basin States by negotiated Compact, Agreement, or by any other method has ever been initiated or taken to increase the benficial consumptive use of said water within said basin by one million acre-feet or in any other amount whatsoever. The State of Nevada alleges that before any Lower Basin State can acquire the right to use said water, authoritative concerted action by the Lower Basin States must

first be had giving the right to increase the beneficial consumptive use of water within said lower basin to the extent of an additional one million acre-feet of water as provided in said Article III(b), and that an equitable apportionment thereof to each of said States, by compact or agreement between such States, or by such other equitable action as will apportion said water is a necessary condition precedent. The State of Nevada further alleges that it is entitled to its equitable share in said water in addition to its equitable share of the water apportioned to the Lower Basin in Paragraph III(a).

IX

Under Article III(f) of the Compact, provision is made for "further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) * * * at any time after October 1, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b)." The State of Nevada has a right to its equitable share of this water if and when the Lower Basin shall have reached its total beneficial consumptive use of 8,500,000 acre-feet of water as set out in Article III(a) and III(b) of the Compact.

X

That the Legislature of the State of California, pursuant to the provisions and the express requirements of Section 4(a) of the Boulder Canyon Project Act, enacted legislation known as the California Limitation Act whereby California irrevocably and unconditionally agreed and agrees with the United States, and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, that the aggregate annual consumptive use of water of and from the Colorado River for use in California, including all uses in California under contract or otherwise, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin States by Article III(a) of said Compact, plus not more than one-half of any excess or surplus waters unapportioned by said Compact. The State of Nevada alleges that Article III(b)

of said Compact constitutes an apportionment of water to the Lower Basin and nowhere in said Boulder Canyon Project Act has the Congress of the United States by such legislation changed or attempted to change either the language or the meaning of said Article III(b) of said Compact so as to constitute the water therein mentioned surplus or excess water.

XI

The Boulder Canyon Project Act failed to mention the waters under Article III(b) of the Compact. Said Act proposed an apportionment between three of the Lower Basin States, to wit, Nevada, Arizona and California, of the waters under Article III(a), plus the "excess or surplus waters unapportioned by the Colorado River Compact." The States of Utah and New Mexico, signatories to the Compact, were not mentioned in said proposed apportionment. The Project Act, in authorizing agreements between the States, made all such agreements subject in all particulars to the provisions of the Colorado River Compact. The State of Nevada alleges that the tri-state agreement authorized by the Congress of the United States in Paragraph 2 of Section 4(a) of the Project Act was never entered into or consummated and by reason thereof the proposed apportionment of water between the States of Nevada, Arizona and California has never become effective and that any apportionment of water therein proposed to be made to the States of Nevada and Arizona has never been consented to nor agreed to by the State of Nevada.

PART THREE: SPECIFIC RESPONSE OF THE STATE OF NEVADA TO THE PLEADINGS OF THE PARTIES

XII

Answering Paragraph XIV of Arizona's Bill of Complaint and Paragraph 60 of California's Answer thereto, and also answering Paragraph 60 of Arizona's Reply to California's Answer, the State of Nevada admits the allegations contained in Paragraph XIV of Arizona's Complaint, admits the allegations contained in Paragraph 60 of California's Answer. The State of Nevada answering Paragraph 60 of Arizona's said Reply, alleges that it has at no time

agreed or assented with any party or parties that it was not entitled to the right to the beneficial consumptive use of the waters of the Colorado River Stream System in excess of 300,000 acre-feet of said waters per annum.

Further answering Paragraph 60 of Arizona's Reply, the State of Nevada alleges that there has been introduced in the Congress of the United States and now pending in said Congress, legislation consisting of six bills wherein the Secretary of the Interior is authorized to construct, operate and maintain within the Colorado River Basin in the State of Nevada, diversion works on and in connection with the tributaries of said river, Lake Mead and the Colorado River below Lake Mead for the furnishing of the waters thereof for irrigation, domestic, industrial and municipal purposes, far in excess of 300,000 acre-feet per annum with an estimated potential beneficial consumptive use of 900,000 acre-feet per annum. The State of Nevada, in this connection, further alleges that the recent extensive engineering examination and study wherein this potential consumptive use of said waters was projected to the year 2000, determined the use and the amount thereof to be as alleged and set forth in Paragraph VI of this Petition.

XIII

(a) Answering Paragraph XV of Arizona's Bill of Complaint, Paragraph 61 of California's Answer and Paragraph 61 of Arizona's Reply, the State of Nevada admits that portions of New Mexico and Utah are located within the Lower Basin of the Colorado River System, as defined by Article II(g) of the Colorado River Compact, and admits that in Article 7(g) of Arizona's Contract with the United States of February 9, 1944, "Arizona recognizes the rights of New Mexico and Utah to equitable shares of water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such Compact, and nothing in this Contract shall prejudice such rights."

(b) The State of Nevada states that it has not sufficient knowledge or information upon which to base a belief, therefore denies that Arizona expects to negotiate with New Mexico and Utah a

compact defining the respective rights of said States of New Mexico and Utah to participate as Lower Basin States in the use of Colorado River water apportioned now or as may hereafter be apportioned to said Lower Basin, and in this connection the State of Nevada alleges there is not only a potential controversy between Arizona, New Mexico and Utah concerning the apportionment of Colorado River water in and to the Lower Basin, but that such controversy extends to and will extend to the States of California and Nevada, particularly with respect to the apportionment of the water provided for in Article III(b) of the Colorado River Compact; and further answering with respect to said potential controversy, the State of Nevada alleges that no compact or agreement between the Lower Basin States relating to the apportionment of Article III(b) water can be legally consummated and made effective unless and until all of the Lower Basin States are made parties thereto.

XIV

Answering Paragraphs XVII(a) and XVII(b) of Arizona's Bill of Complaint the State of Nevada denies each, every and all of said allegations save and except that the State of Nevada admits that Arizona is not now presently beneficially consumptively using 3,800,000 acre-feet of water per annum.

Answering Paragraph 63 of California's Answer, the State of Nevada denies each, every and all of said affirmative allegations save and except that the State of Nevada admits that the share of water to which Arizona may be entitled, and to which the States of Nevada, New Mexico, and Utah are entitled, has not been determined in any manner.

As to Paragraph 63 of Arizona's Reply, State of Nevada alleges that there is available to Arizona, Nevada, New Mexico and Utah, out of the waters of the Colorado River System apportioned to the Lower Basin by Article III(a) of the Compact, the beneficial consumptive use of 3,100,000 acre-feet of water per year with the right given to the States of Arizona, California, Nevada, New Mexico and Utah to increase their beneficial consumptive use an

additional 1,000,000 acre-feet in the manner set forth in Paragraph VIII of this petition. Allege that the use of the waters of the Gila River, chargeable to Arizona, are to be charged to Arizona's apportionment of Article III(a) water. Allege that in addition said States have a right to an undetermined quantity of surplus water not yet apportioned by the Compact. Alleges that the shares of beneficial consumptive use of Colorado River System water in the Lower Basin to which Arizona, California, Nevada, New Mexico and Utah are entitled have not been fully determined and the share to which Nevada is entitled is the quantity of 539,100 acre-feet of water per annum apportioned to the Lower Basin by Article III(a) of the Compact, plus an equitable apportionment of the water apportioned to the Lower Basin by III(b) of the Compact, plus an undetermined quantity of surplus water not apportioned by the Compact.

Denies all allegations of Paragraph 63 of Arizona's Reply not specifically admitted herein.

XV

Answering Paragraph XVIII of Arizona's Complaint, Paragraph 64 of California's Answer and Paragraph 64 of Arizona's Reply, the State of Nevada alleges that Article VII of the Compact provides that nothing herein shall be construed as affecting the obligations of the United States of America to Indian Tribes. The State of Nevada alleges all beneficial consumptive uses in Arizona, California, Nevada, New Mexico and Utah of Colorado River System water by Indians is chargeable to the share of Colorado River System water to which each of said States is legally entitled. Denies all the allegations of the above paragraphs not specifically admitted herein.

XVI

Answering Paragraph XX of Arizona's Complaint, Paragraph 66 of California's Answer, and Paragraph 66 of Arizona's Reply, the State of Nevada admits that at the request of Arizona the United States Bureau of Reclamation has investigated a project to

bring water to Central Arizona from the main stream of the Colorado River and that such project is known as the Central Arizona Project and further admits that bills were introduced into the 81st and 82d Congresses authorizing the Central Arizona Project and such bills were passed by the United States Senate, but failed to pass in the House of Representatives, admits that the House of Representatives Committee on Interior and Insular Affairs adopted resolutions as set forth on page 70 of California's Answer. The State of Nevada denies the claim of title of Arizona to the beneficial consumptive annually use of 3,800,000 acre-feet of water (subject to the rights of New Mexico and Utah) of the Colorado River System, as set forth in the last sentence of Paragraph XX of Arizona's Complaint. The State of Nevada alleges that the rights of Nevada in said 3,800,000 acre-feet of water are as set forth in this Petition of Intervention. The State of Nevada has not sufficient knowledge or information upon which to base a belief as to the other allegations in said Paragraphs XX of Arizona's Complaint and 66 of California's Answer and Arizona's Reply and therefore denies the same.

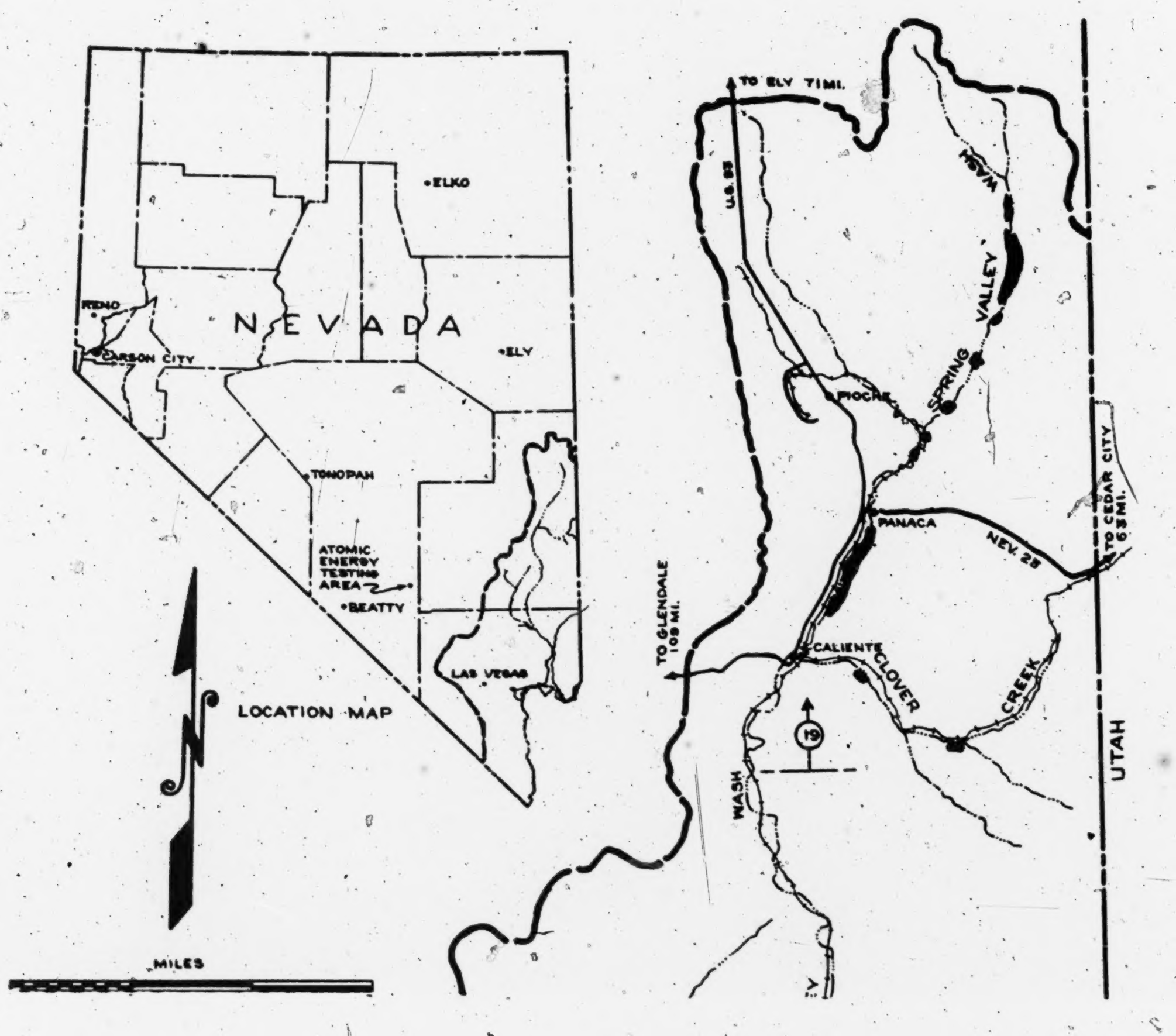
XVII

Answering Paragraphs XXI of Arizona's Complaint and 67 of California's Answer, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief and therefore denies the allegations therein contained.

XVIII

Answering Paragraph XXII of Arizona's Bill of Complaint and Paragraph 68 of California's Answer thereto, the State of Nevada admits that there is a controversy between Arizona, California and Nevada relative to the construction and application of the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act as follows:

1. Is the water referred to and affected by Article III(b) of the Compact apportioned or unapportioned water? The State of Nevada admits all and singular the allegations contained in Subdivision No. 1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PIOCHE
PANACA
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TO CEDAR CITY 63MI.
TO GLENDALE 108 MI.
CALIENTE
CLOVER CREEK
19
UTAH

of said Paragraph XXII of said Complaint, save and except that when the States of the Lower Basin by authoritative, concerted action shall have increased their right to the beneficial consumptive use of the waters apportioned in and by Article III(a) by one million acre-feet of water as provided in Article III(b), that California would then be entitled to its equitable share thereof; the State of Nevada further alleges that Article III(b) water does not constitute surplus and excess water within the meaning of the Colorado River Compact, nor Section 4(a) of the Boulder Canyon Project Act.

2. How is beneficial consumptive use to be measured? The State of Nevada agrees that the Colorado River Compact does not apportion the water among the Lower Basin States, but that it serves to apportion the beneficial consumptive use thereof, and Nevada agrees that the Compact contains no definition of any method of measuring beneficial consumptive use. However, the State of Nevada alleges that the measure of beneficial consumptive use of the waters of the Colorado River Stream System is the commonly recognized measure in the Western States including Nevada, to wit: Beneficial consumptive use is the measured diversion from the source less the measured return flow thereof to said source, save and except, the State of Nevada alleges that there is an exception to the application of the rule of diversion less return flow, in that there are certain claimed tributaries to the Colorado River below Lee Ferry and in the Lower Basin of said river, wherein some of the waters thereof, in a state of nature and prior to the works of man, never reached the main stream of the Colorado River because of the fact that such tributaries were wasting streams due to channel losses occasioned by evaporation and transpiration, but which a portion of said losses were converted to beneficial purposes by the activities of man by impounding, pumping and diversion of said waters upstream from the area wherein the major losses by evaporation and transpiration took place, in which event the measure of beneficial consumptive use is by the main stream depletion theory, to wit, the tributaries to be charged only with the quantity of water which constitutes the

depletion of such tributaries at their confluence with the main stream, brought about by the activities of man.

The State of Nevada further alleges that in reference to losses by evaporation and transpiration under virgin conditions on the main stream of the Colorado River in the Lower Basin, that when such losses are salvaged by the activities of man and placed to beneficial use, the amount of such salvage is not a charge against the apportionment of Colorado River water to the State wherein such salvage is made, i. e., the amount of salvaged water is deductible from the total beneficial consumptive use as measured by the rule of diversions less return flow.

3. How are evaporation losses from Lower Basin stream storage reservoirs to be charged? The State of Nevada alleges that evaporation losses of water from storage reservoirs on the main stream of the Colorado River in the Lower Basin are first chargeable out of excess or surplus water and that such evaporation losses are not chargeable against Article III(a) or III(b) waters unless and until all such available excess or surplus water is exhausted in any given year.

XIX

Answering Paragraph XXV of Arizona's Bill of Complaint, the State of Nevada admits that the Congress of the United States stated in Section 4(a) of the Project Act what it deemed to be a fair apportionment among California, Arizona, and Nevada, of the beneficial consumptive use of water apportioned to the Lower Basin by the Compact, but, in connection with said admission, the State of Nevada states it has not sufficient knowledge, or information upon which to base a belief whether such apportionment was and is fair and equitable to the Lower Basin, therefore denies such allegation, and further the State of Nevada specifically denies said proposed apportionment was and is fair, equitable, or sufficient as therein made to the State of Nevada.

Further answering said Paragraph XXV, the State of Nevada states it has not sufficient knowledge, or information upon which to

base a belief, therefore denies all and singular the allegations contained in that portion of said paragraph beginning with the word "Arizona" in line 5 and ending with the word "Nevada" in line 19, page 28 of said Bill of Complaint.

XX

(a) Answering Paragraphs XXVI of Arizona's Complaint, 72 of California's Answer, and 72 of Arizona's Reply, the State of Nevada has not sufficient knowledge or information upon which to base a belief and therefore denies the same except that the State of Nevada admits that California intends to use water as therein set forth in its Answer, but denies that said State is entitled to or has the right to more than the beneficial consumptive use of 4,400,000 acre-feet of water under Article III(a) of the Compact plus an equitable share of water under Article III(b), when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus not more than one half of any excess or surplus water.

(b) The State of Nevada denies that such excess or surplus waters includes the water referred to in Article III(b) of the Compact.

(c) The State of Nevada further denies that California or any Lower Basin State has ever acquired any rights adverse to the rights of the State of Nevada in any water under the Compact by reason of nonuse of waters by the State of Nevada or may in the future acquire any rights adverse to the rights of the State of Nevada in such waters by reason of the nonuse by the State of Nevada.

(d) The State of Nevada further denies that California has any right to increase its diversions and beneficial consumptive use of water above 4,400,000 acre-feet of Article III(a) water, plus an equitable share of water under Article III(b), when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus one half of any excess or surplus waters, and by any additional diversion or use of such waters California cannot thereby acquire any rights in derogation of or adverse

to the rights of the State of Nevada without the express official agreement or assent of the State of Nevada.

XXI

Answering Paragraphs XXVII of Arizona's Complaint, 73 of California's Answer, the State of Nevada admits there is a serious controversy between Arizona and California, but denies the other allegations in said Paragraph XXVII of said Complaint. The State of Nevada alleges in this connection that the economic interests of Arizona, California, Nevada, Utah and New Mexico, as signatories to and beneficiaries under the Colorado River Compact, are vitally affected by this controversy.

XXII

Answering Paragraphs XXVIII of Arizona's Complaint and 74 of California's Answer, the State of Nevada admits the allegations in said paragraphs.

XXIII

Answering Paragraph XXIX of Arizona's Bill of Complaint, the State of Nevada admits all and singular the allegations therein contained, and alleges that any State in the Lower Basin is entitled to seek its remedy in this Court and therein pray for the adjudication of its right to the use of the waters of the Colorado River Stream System.

XXIV

Answering the first affirmative defense of California, the State of Nevada alleges that the use of the waters of the Colorado River Stream System by the State of California is subject to and limited by the Colorado River Compact, the Project Act, and the Limitation Act to the quantities of water therein set forth, and that contracts between the United States of America and the various defendant contracting agencies are upon the express condition and with the express understanding that all rights under such contracts are subject to and governed by the Colorado River Compact, which Compact

was approved in Section 13(c) of the Boulder Canyon Project Act.

The State of Nevada further alleges that such contracts do not create in California any right to use more than four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus an equitable share of water under Article III(b) when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus not more than one half of any excess or surplus water.

The State of Nevada denies the allegations of Paragraph 37(b) of Arizona's Reply alleging that Article III(a) of the Compact apportions certain amounts of water to the respective States of Arizona, California and Nevada and in this connection the State of Nevada alleges that Article III(a) of the Compact makes no apportionment of any kind to any of the Lower Basin States and makes no apportionment whatever except as between the Upper and Lower Basin.

XXV

Answering the Third Affirmative Defense of California, the State of Nevada alleges that all allegations therein as to the alleged appropriative rights of California are immaterial and irrelevant to a determination of the issues in this case for the following reasons:

1. Appropriative rights under California law are not binding upon the United States of America, the State of Nevada, or any other State of the Colorado River System, except the State of California.

2. The rights that California may have at any time to the use of waters of the Colorado River System are now and at all times since the effective date of the Colorado River Compact subject to the terms of said Compact, the Boulder Canyon Project Act and the California Limitation Act.

XXVI

The State of Nevada denies all the allegations, arguments, conclusions or averments in the respective pleadings of the parties which

are at variance with the facts and allegations of this petition of interpleader or in contravention of the rights of the State of Nevada as herein above set forth.

WHEREFORE, The State of Nevada respectfully prays:

1. That the rights of the States of Arizona, California, Nevada, New Mexico, Utah and the United States of America in and to the use of the waters of the Colorado River Stream System be adjudicated, determined and forever set at rest.

2. That the right of the State of Nevada in and to the beneficial consumptive use of 539,100 acre-feet of the water apportioned to the Lower Basin in and by Article III(a) of the Colorado River Compact be confirmed unto the State of Nevada in perpetuity.

3. That this Honorable Court enter its judgment and decree, that the additional one million acre-feet of water set forth and provided in Article III(b) of the Colorado River Compact is water apportioned to the Lower Basin, and be subject to use only when all the Lower Basin States shall have by authoritative Compact or Agreement increased the beneficial consumptive use in said Basin as provided in said Article III(b), at which time the State of Nevada shall be decreed the right to an equitable share thereof.

4. That the State of Nevada shall be decreed the right to its equitable share in and to the beneficial consumptive use of water to be apportioned under Article III(f) of the Colorado River Compact; provided, that the equitable share of the State of Nevada in Article III(b) water and the equitable share of the State of Nevada in Article III(f) water, together with its equitable share in the water apportioned pursuant to Article III(a) of said Compact in the amount of 539,100 acre-feet, shall not be less than 900,000 acre-feet per annum.

5. That the State of Nevada have such other and further relief as the Court may deem proper.

6. The State of Nevada further prays leave to amend this Petition

of Intervention if such amendments become necessary in the course of the pleadings or proceedings in this Cause.

DATED: December 1, 1953.

W. T. MATHEWS,
Attorney General of Nevada,

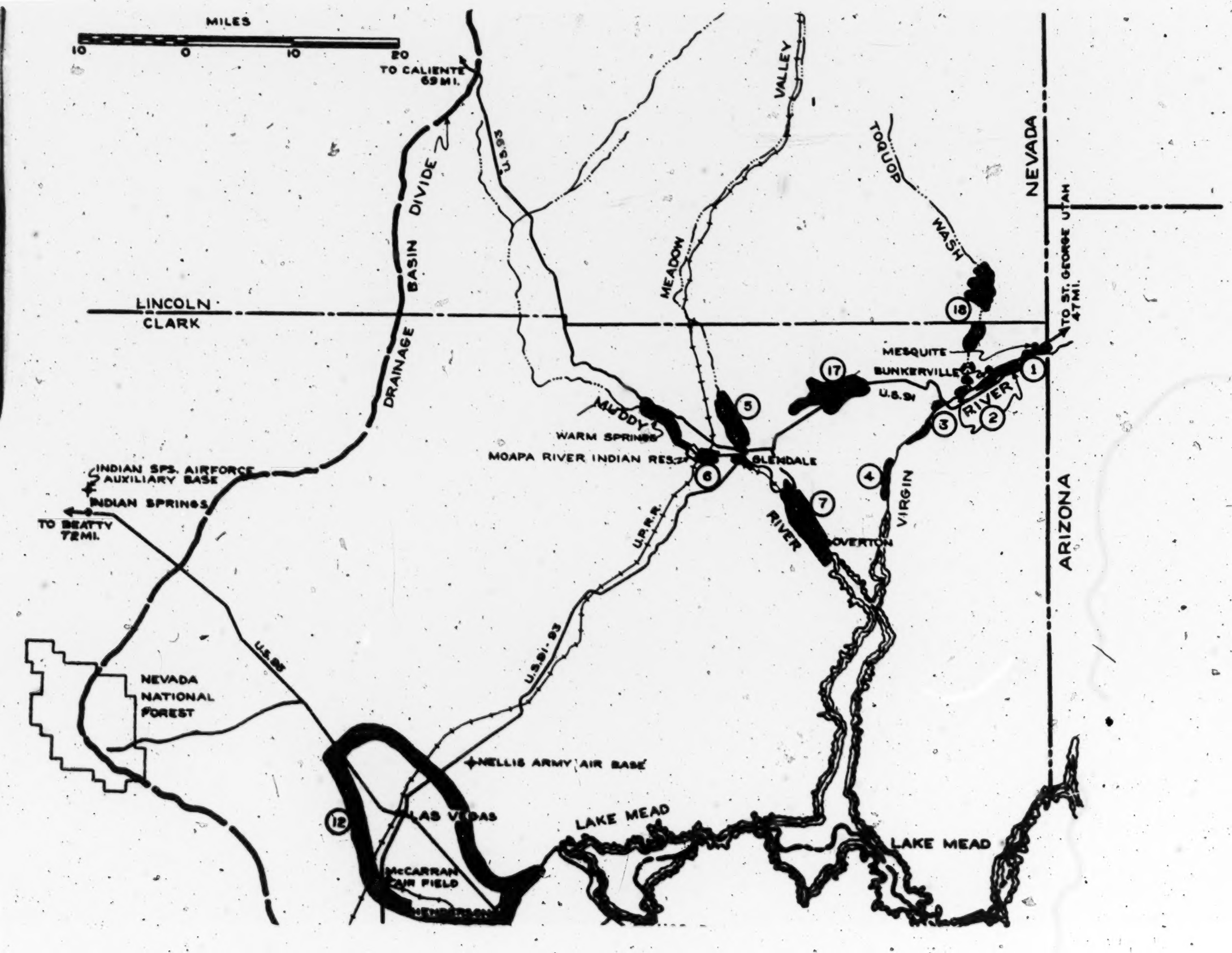
ALAN BIBLE,
Special Assistant Attorney General of Nevada,

WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,

GEO. P. ANNAND,
Deputy Attorney General of Nevada,

WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada,

JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.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MESQUITE
BUNKERVILLE
U.S. 91
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MOAPA RIVER INDIAN RES.
GLENDALE
RIVER
OVERTON
U.P.R.R.
U.S. 91-93
INDIAN SPS. AIRFORCE AUXILIARY BASE
INDIAN SPRINGS
TO BEATTY 72 MI.
U.S. 95
NEVADA NATIONAL FOREST
NELLIS ARMY AIR BASE
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No. 10, Original

In the Supreme Court of the United States

October Term, 1953

STATE OF ARIZONA, Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, Defendants,

UNITED STATES OF AMERICA, Intervener,

STATE OF NEVADA, Intervener.

MEMORANDUM OF NEVADA IN REPLY TO MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE BY THE UNITED STATES OF AMERICA

W. T. MATHEWS,
Attorney General of Nevada,
ALAN BIBLE,
Special Assistant Attorney General of Nevada,
WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,
GEO. P. ANNAND,
Deputy Attorney General of Nevada,
WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada,
JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

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UNITED STATES OF AMERICA, Intervener,

STATE OF NEVADA, Intervener.

MEMORANDUM OF NEVADA IN REPLY TO MEMORANDUM REQUESTING PRE-TRIAL CONFERENCE BY THE UNITED STATES OF AMERICA

Comes Now the State of Nevada and for its Reply to the Memorandum Requesting Pre-Trial Conference by the United States of America, admits, denies and alleges as follows:

I

Answering Paragraph I of said Request, the State of Nevada states that its preceding motion for leave to intervene, as alleged on page 2 of said Request; was granted by the Court on June 1, 1954, but denies that the State of Arizona has filed an applicable response to Nevada's petition in Intervention in that the alleged

Response of Arizona constituted nothing more than a demurrer interposed in opposition to the granting of Nevada's motion.

Answering subparagraph three of Paragraph I, the State of Nevada admits that voluminous pleadings have been filed in this action together with numerous pages of appendices to such pleadings, and in this connection Nevada alleges that all of said pleadings and appendices so far filed were and are necessary and constitute indispensable allegations of fact to apprise the Court of each and every issue, the resolving of which is vitally necessary to enable the Court to determine and settle the respective rights of the parties to the action. However, Nevada alleges that notwithstanding the present status of the pleadings so far filed, insofar as Nevada is concerned none of the issues raised by it in its Petition of Intervention have been controverted or joined by any other party to the action save the State of California. The United States, at page 6 of its Request, states that no disposition having been made of the motion of Nevada for leave to intervene, reference to the issues presented by Nevada will not be reviewed. Nevada suggests that now, its motion to intervene being granted, material issues will be drawn between the United States and Nevada by most applicable pleadings on the part of Nevada. The same situation exists between Arizona and Nevada. Upon the granting of Nevada's motion to intervene, Arizona will of necessity be required to file an answer to Nevada's Petition of Intervention with Nevada's right to reply thereto, then only will the material issues be joined between Arizona and Nevada.

The State of Nevada further alleges that the States of New Mexico and Utah, signatories of the Colorado River Compact, are classed, in part, by and in the Compact as Lower Basin States. Article II, paragraphs (f) and (g) provide:

> (f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also

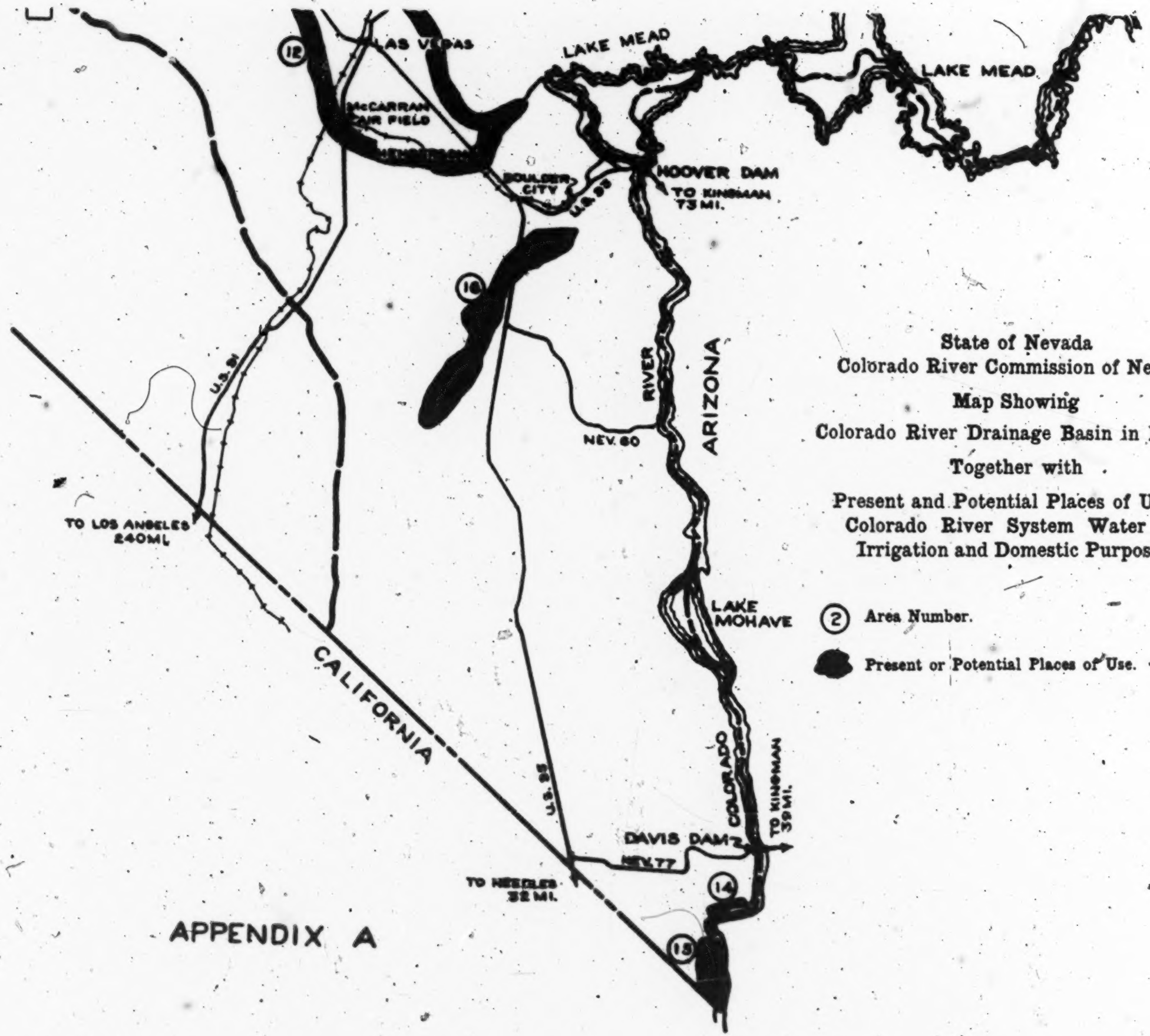
all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

Notwithstanding the fact that New Mexico and Utah unquestionably possess rights to the use of the waters of the Colorado River Stream System apportioned to the Lower Basin States and by reason thereof each said State is an indispensable party to this cause, neither of them has been made a party thereto nor has either petitioned the Court for leave to intervene. Nevada most respectfully suggests that unless and until New Mexico and Utah are made or become parties herein, vital issues pertaining to the apportionment of the waters to which all of the Lower Basin States are entitled under the Compact cannot be judicially fixed and determined. And Nevada has so alleged in Paragraphs XIII, XI of the Petition of Intervention on Behalf of the State of Nevada filed herein December 21, 1953. Nevada suggests that all of the vitally necessary issues are not now sufficiently, or at all, joined to warrant a pre-trial conference.

II

Answering Paragraph II of the Request for Pre-Trial Conference of the United States, the State of Nevada denies that all the basic issues are as set forth therein and in this connection alleges that the basic issues are as set forth in Exhibit A of the Answer of California Defendants to Petition of Intervention on Behalf of the United States of America, designated Summary of the Controversy, and



State of Nevada
Colorado River Commission of Nevada

Map Showing

Colorado River Drainage Basin in Nevada

Together with

Present and Potential Places of Use of Colorado River System Water for Irrigation and Domestic Purposes.

(2) Area Number.

Present or Potential Places of Use.

APPENDIX A

the State of Nevada further alleges that said basic issues are interlocking and one or several issues cannot be decided independently of the other issues.

III

Answering subparagraph one of Paragraph III of the Request for Pre-Trial Conference of the United States, the State of Nevada alleges that the complexities of the litigation and numerous issues involved in this cause and the need for an early resolution of the controversy for the benefit of all parties and the Nation as a whole and the summary of the issues as set forth in California's Answer referred to in Paragraph II above, is accurate and concise based upon the pleadings of record at this time.

Answering subparagraph two of Paragraph III, the State of Nevada denies that "Antecedent to any resolution of the many and varied issues in this action must be a determination of the two basic propositions advanced by the State of California" and in this connection alleges that the matter is not at issue at the present time so as to warrant a pre-trial conference on any one or two issues and further, that the alleged one or two principal issues mentioned by the United States are so interrelated with other issues that it would not be judicious to attempt a determination of the said two basic issues.

IV

Answering Paragraph IV of the Request for Pre-Trial Conference of the United States, the State of Nevada denies that the reasons mentioned by the United States justify a pre-trial conference at this juncture of the proceeding and in this connection alleges that all the Lower Basin States are indispensable parties to this cause and until all such States are parties hereto and the issues fully joined between them and the United States, a pre-trial conference is premature.

Since the filing and service of the Memorandum Requesting Pre-Trial Conference by the United States, the Court, on June 1, 1954, appointed a Special Master to hear and report the future proceedings in the cause, including a resolving of the issues therein subject

to review by the Court. Nevada respectfully suggests that if a pre-trial conference before the Court, or a Justice thereof, is desirable or necessary, that it be not ordered until each, every and all the issues pertinent to the cause be drawn and that the Special Master participate therein.

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WILLIAM J. KANE,
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IN THE

Supreme Court of the United States

October Term, 1952

No. 10, ORIGINAL

STATE OF ARIZONA,

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

UNITED STATES OF AMERICA, INTERVENER.

STATE OF NEVADA, INTERVENER.

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Arizona Interstate Stream Commission
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Assistant Counsel,
Arizona Interstate Stream Commission
PERRY M. LING
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ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA.

IN THE

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Defendants

UNITED STATES OF AMERICA, INTERVENER.

STATE OF NEVADA, INTERVENER.

ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA.

COMES now the State of Arizona, Complainant above named, and for its Answer to the Petition of Intervention on behalf of the State of Nevada says:

FIRST AFFIRMATIVE DEFENSE:

NEVADA IS ENTITLED TO THE ANNUAL DELIVERY OF NOT TO EXCEED 300,000 ACRE-FEET OF WATER FROM THE COLORADO RIVER SYSTEM IN ACCORDANCE WITH ITS CONTRACT OF JANUARY 3, 1944 WITH THE UNITED STATES.

1.

None of the parties to this cause has questioned the allocation to the State of Nevada of the beneficial consumptive use of 300,000 acre-feet of Colorado River System water as provided by the January 3, 1944 amendment of the March 30, 1942 contract between the United States of America and the State of Nevada.

2.

Section 5 of the Boulder Canyon Project Act (45 Stat. 1057) authorizes the Secretary of the Interior to contract for the storage of water in and delivery of water from the reservoir created by the dam authorized for construction by said Act and provides that:

> "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

3.

Paragraph 4 of the January 3, 1944 contract between the United States of America and the State of Nevada provides:

> "Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water, including all other waters diverted for use within the State of Nevada from the Colorado River System, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power."

4.

The State of Nevada in its Motion for Leave to Intervene and in its tendered Petition of Intervention fails to allege that (a) it has or can obtain any contract from the United States of America for any greater quantity of water than that referred to in the aforementioned January 3, 1944 contract, and (b) that there is physically available for use within the State of Nevada any quantity of Colorado River System water, other than that possibly available from Lake Mead Storage, in excess of the 300,000 acre-feet referred to in said January 3, 1944 contract.

5.

The State of Nevada fails to allege that it has any fixed, definite plans for the use, within any reasonable time, of any greater quantity of Colorado River System water than that referred to in the said January 3, 1944 contract.

* * *

SECOND AFFIRMATIVE DEFENSE

COMPLAINANT HAS THE RIGHT TO THE BENFICIAL CONSUMPTIVE USE OF 2,800,000 ACRE-FEET PER ANNUM OF WATERS DELIVERED FROM STORAGE IN LAKE MEAD UNDER ITS CONTRACT WITH THE UNITED STATES DATED FEBRUARY 9, 1944.

1.

Paragraph 7 (a) of the February 9, 1944 contract between Arizona and the United States reads as follows:

"Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet."

Complainant refers to Exhibit "C" to the Bill of Complaint herein for the entire text of such contract.

2.

Prior to the execution of such contract Nevada approved and recommended the same and is now estopped to deny the validity or provisions thereof.

* * *

TRAVERSE

1.

Answering Paragraph I of said petition, Complainant admits the allegations of said paragraph except that with respect to the allegations of the last unnumbered sub-paragraph thereof, alleges that Complainant does not have sufficient knowledge or information to form a belief as to the truth thereof, and further alleges that such allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

2.

Complainant deems that the allegations contained in Paragraph II do not require any answer.

3.

Answering Paragraph III of said petition Complainant admits the allegations thereof except the allegation that Nevada is an indispensable party to this suit, which allegation Complainant expressly denies.

4.

Answering Paragraph IV Complainant admits that Nevada is a signatory state to the Colorado River Compact dated November 24, 1922 and a member state of the Lower Basin thereunder. Complainant alleges that the share of the waters to which Nevada is entitled is as set forth by the January 3, 1944 amendment of the March 30, 1942 contract between the United States and Nevada, and Complainant refers to and incorporates herein its First Affirmative Defense in this Answer. Complainant admits the allegations of the last sentence of Paragraph IV.

5.

Answering Paragraph V, Complainant admits the allegations thereof except the allegation that the State of Nevada has the right to the beneficial consumptive use of water under Article III (a) of the Compact of 539,100 acre-feet for present and future agricultural and domestic uses, which allegation Complainant denies and refers to and incorporates herein its First Affirmative Defense in this Answer.

6.

(a) Answering Paragraph VI (a) of said Petition, Complainant admits the allegations of the first sentence thereof. Complainant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said Paragraph VI (a), and therefore denies the same, and alleges that said

allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

(b) Answering Paragraph VI (b), Complainant alleges that it is without knowledge or information sufficient to form a belief as to either of the allegations thereof and therefore denies the same, and alleges that said allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

(c) Answering Paragraph VI (c) of said Petition, Complainant admits that the present uses set forth in the table therein contained are substantially correct, Complainant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said Paragraph VI (c), including the tabulations appearing therein, to form a belief as to the truth thereof, and therefore denies the same and alleges that said allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

7.

Answering Paragraph VII of said Petition, Complainant admits that the Defendants herein are presently claiming the right to the use of at least 5,362,000 acre-feet of water per annum, but denies the right of Defendants to use such quantity of water or any portion thereof except as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and this Answer; and admits that Complainant State of Arizona is presently claiming the right to the annual beneficial consumptive use of not less than 3,800,000 acre-feet of waters of the Colorado River System. Complainant concedes that Nevada has the right to the use of 300,000 acre-feet of said

waters per annum, but alleges that said right is as set forth in and limited by the contract between the United States and Nevada. Complainant refers to and incorporates herein its First Affirmative Defense in this Answer. Complainant denies all the allegations of Paragraph VII not heretofore expressly admitted.

8.

Answering Paragraph VIII of said Petition, Complainant admits the first sentence thereof, and alleges that the effect of Articles III (a) and III (b) of the Colorado River Compact are as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer to the United States Petition of Intervention, and in this Answer. Complainant denies all of the allegations of Paragraph VIII not heretofore expressly admitted.

9.

Answering Paragraph IX of said Petition, Complainant admits the allegations thereof.

10.

Answering Paragraph X of said Petition, Complainant admits the allegations thereof, but alleges that the interpretation and construction of the documents referred to therein are as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and in this Answer.

11.

Answering Paragraph XI of said Petition, Complainant admits the allegations thereof, but alleges that the construction and interpretation of the documents referred to therein are as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer,

Complainant's Answer to the United States Petition of Intervention, and in this Answer. Complainant further alleges that although no formal compact was ever entered into among the States of Arizona, California and Nevada, pursuant to provisions of Section 4 (a) of the Boulder Canyon Project Act, said States accepted and approved the apportionment suggested therein by entering into their various contracts with the United States of America for the use of waters of the Colorado River System, and said States are now estopped and precluded from denying the legal effect of such apportionment. Section 5 of the Boulder Canyon Project Act, among other things, provides:

> "Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to Paragraph (a) of Section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

12.

Answering Paragraph XII of said Petition, Complainant denies the allegations of the second sentence of the first unnumbered sub-paragraph thereof, and alleges that the rights of Nevada to the beneficial consumptive use of waters of the Colorado River System are as set forth in and limited by its contract with the United States, and Complainant refers to and incorporates herein its First Affirmative Defense in this Answer.

Complainant alleges that the allegations in the second unnumbered sub-paragraph of Paragraph XII are immaterial and irrelevant to any consideration or determination of the issues in this case.

13.

Answering Paragraph XIII of said Petition, Complainant denies all of the allegations thereof except as they conform to the allegations of the Bill of Complaint, Complainant's Reply to the Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and this Answer.

14.

Answering Paragraph XIV of said Petition, Complainant denies the allegations thereof except such as conform to the allegations of the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and this Answer.

15.

Answering Paragraph XV of said Petition, Complainant alleges that the manner in which uses of Colorado River System water by Indians and Indian tribes is charged is immaterial and irrelevant to any consideration or determination of the issues in this case.

16.

Answering Paragraph XVI of said Petition, the Complainant denies the allegations thereof except such as conform to the allegations in the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to United States Petition of Intervention, and this Answer.

17.

Complainant deems that Paragraph XVII of said Petition does not require any answer.

18.

Answering Sub-paragraph 1 of Paragraph XVIII, of said Petition, Complainant admits that the waters apportioned by Article III (b) of the Colorado River Compact do not constitute surplus or excess water within the meaning of the Colorado River Compact or the Boulder Canyon Project Act. Complainant denies the remaining allegations of Sub-paragraph 1.

Answering Sub-paragraph 2 of Paragraph XVIII of said Petition, Complainant admits the allegations thereof.

Answering Sub-paragraph 3 of Paragraph XVIII of said Petition, Complainant alleges that evaporation losses from main-stream reservoirs in the Lower Basin are to be charged as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer, and Complainant's answer to the United States Petition of Intervention.

19.

Answering Paragraph XIX of said Petition, Complainant alleges that the apportionment among Arizona, California and Nevada proposed by Congress in Section 4 (a) of the Boulder Canyon Project Act is fair, equitable and just as to each of said states.

20.

Answering Paragraph XX of said Petition, Complainant denies that California is entitled to an equitable share or any share of the waters apportioned by Article III (b) of the Colorado River Compact and alleges that the rights of California are as set forth in and limited by the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act.

21.

Answering Paragraph XXI of said Petition, Complainant denies that the economic interests of Nevada, Utah or New Mexico are vitally affected by the controversy between Arizona and California.

22.

Complainant deems that Paragraph XXII of said Petition does not require any answer.

23.

Answering Paragraph XXIII of said Petition, Complainant admits the allegations thereof, but alleges that there is no controversy involving Nevada, Utah or New Mexico which requires adjudication by this Court.

24.

Answering Paragraph XXIV of said Petition, Complainant denies that California is entitled to an equitable share or any share of the waters apportioned by Article III (b) of the Colorado River Compact, and alleges that the rights of California are as set forth and limited by the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act.

25.

Answering Paragraph XXV of said Petition, Complainant admits the allegations thereof.

26.

Complainant does not deem that Paragraph XXVI of said Petition requires any answer.

27.

Complainant denies each and every affirmative allegation of the Nevada Petition of Intervention not specifically admitted in this Answer.

WHEREFORE, Complainant prays as in its Complaint and Reply to the Answer of the Defendants.

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BURR SUTTER,
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PERRY M. LING,
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Office - Supreme Court, U. S.
FILED
JUL 15 1954
HAROLD B. WILLEY, Clerk

IN THE

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No. 10 Original.

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vs.

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming.

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SUBJECT INDEX

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming.

To the Honorable, The Chief Justice, and The Associate Justices of the Supreme Court of the United States:

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, The City of Los Angeles, The City of San Diego and County of San Diego, by their

duly authorized attorneys, respectfully move this Court to order the joinder of the States of Colorado, New Mexico, Utah and Wyoming as additional parties to this action, and that, in furtherance of said order, a summons be issued to said states through their respective Governors and Attorneys General, directing them to appear as parties to this action at a time to be fixed in said summons, and that the Court direct that all pleadings filed herein be served on said officials.

This motion is made upon the grounds that each of said States is a necessary and indispensable party to this action, for the following reasons:

I.

The four absent States of Colorado, New Mexico, Utah and Wyoming are parties to the Colorado River Compact. Nevada sought leave to intervene in this case as a party to the Compact, and her motion was granted. The meaning and effect of the Colorado River Compact are in controversy in the present case. No decree determining the meaning and effect of that Compact, considered as a contract, can be fully effective in the absence of the other four parties to it. The principal issues of interpretation of the Colorado River Compact affecting the four absent States are stated in Defendants' Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part of this allegation as though here fully set out.

II.

Two of the absent States, New Mexico and Utah, have a dual interest with respect to the rights and obligations of parties to the Colorado River Compact, being States of the Upper Division (a status which they share with Colorado and Wyoming), as well as States which are in part within the Lower Basin (in common with Arizona, California and Nevada). Nevada sought leave to intervene not only as a party to the Compact but as an indispensable party to this action in her capacity as a Lower Basin State, and her motion was granted. The absent States of New Mexico and Utah, similarly to Nevada, are indispensable parties to the full resolution of the controversy among the States of the Lower Basin. As States lying in part within the Lower Basin, Utah and New Mexico participate in undetermined amounts in the right to beneficial consumptive use of a "common fund" of water available for use in the Lower Basin under the Colorado River Compact. No decree determining the rights of the present parties to this proceeding can be fully effective without the presence, as parties, of the other States having the right to participate in the use of said "common fund" of water.

III.

The four absent States, in like manner as Nevada and Arizona, are named as third party beneficiaries of the Statutory Compact between the United States and California evidenced by the Boulder Canyon Project Act and the California Limitation Act. The meaning and effect

of that Statutory Compact are in controversy in the present cause. No decree determining the rights and obligations of the United States and California as principals, and of Nevada and Arizona as two of the third-party beneficiaries of said Statutory Compact, can be fully effective in the absence of the other four beneficiaries. The principal issues of interpretation of that Statutory Compact which affect the four absent States are stated in Defendants' Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part of this allegation as though here fully set out.

IV.

The United States asserts claims "as against the parties to this cause," which are independent of, and adverse to, rights derived from or controlled by the Colorado River Compact. These claims of the United States affect all States in the Colorado River Basin, not merely the States of Arizona, California and Nevada. The absent States of Colorado, New Mexico, Utah and Wyoming are necessary and indispensable to the determination of these claims of the United States and of the effect thereof upon each of the seven States. The principal issues which arise from the claims of the United States and require the presence of all seven States are stated in Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part hereof as though here fully set out.

V.

This motion is based upon the records, files and pleadings herein.

Respectfully submitted.

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San Diego, California,
Attorney for Defendant, County of San Diego, California.

July 1954.

EXHIBIT A.

Summary of the Controversy

I. The Quantities of Water in Controversy.

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by "diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colorado River Compact and 962,000 acre-feet per annum of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of

the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diversions less returns to the river," or to about 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues.

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.*, with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are

chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife, flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to this cause" for these functions, such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Compact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River, and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use, under its government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water

and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes, or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as these contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a

Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves; the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations, in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the waters referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree?

(1) Quieting title to 539,100 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2). Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3). Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum, from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado

River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues.

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian Tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wildlife, and (d) the other claims which it makes;

(4) the quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty.

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and

flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact as California contends; by what process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the main stream and tributaries; the date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, i. e., "rights which may now exist"; whether Indian rights, and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consump-

tive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus waters unapportioned by the Compact, as California contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California

contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: Whether, if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact,

the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: Whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-

Indian users under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden; and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.*, 1922, 1929, or some other date; the definition of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when present "perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six State Compact remains in effect; if does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre feet of III(a) waters) of one-half of

the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess or surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.

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IN THE

Supreme Court of the United States

October Term, 1953

No: 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion on Behalf of the California Defendants for Leave to File an Amended Answer to the Bill of Complaint of Arizona

and

Amendatory Answer.

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IN THE

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October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

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vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion on Behalf of the California Defendants for Leave to File an Amended Answer to the Bill of Complaint of Arizona.

To the Honorable, the Chief Justice, and the Associate

City of San Diego and County of San Diego (hereinafter called the California Defendants, by their duly authorized attorneys respectfully move the Court for leave to file this amendment to Paragraph 68 of their Answer to Arizona's Bill of Complaint; all other provisions of that said Answer remaining unchanged.

Statement.

Paragraph XXII of Arizona's Bill of Complaint alleged that the controversy between plaintiff and defendants relates to three legal questions there summarized. The Answer of the California Defendants to Arizona's Bill of Complaint, paragraph 68, denied that the subject of the controversies is fully or accurately set out in the Bill of Complaint, and alleged that there are additional subjects of controversy between complainant and defendants.

After the filing of the Answer of Defendants to Arizona's Bill of Complaint, the United States of America and the State of Nevada filed Petitions of Intervention. These Petitions broadened the scope of the litigation, adding additional subjects of controversy. The California Defendants, in their Answers to those Petitions, summarized the issues in the controversy as disclosed by the pleadings up to that time. That summary of the issues is appended as Exhibit A to the Answer of California Defendants to Petition of Intervention on Behalf of the United State of America and is incorporated by reference in their Answer to Nevada's Petition.

To bring the defendants' pleadings in answer to Arizona into conformity with those subsequently filed in an

Amendatory Answer.

Paragraph 68 of the Answer of the California Defendants to Arizona's Bill of Complaint is amended to read as follows:

Answering Paragraph XXII of the said Bill of Complaint, admit that controversies exist between the plaintiff and the defendants as to the interpretation, construction and application of the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, but deny that the subject of such controversies is fully or accurately set out in the said Paragraph XXII, and allege that there are additional subjects of controversy disclosed by Affirmative Defenses and denials contained in this Answer. Deny the accuracy or validity of the alleged solutions to the controversies suggested by Arizona in said Paragraph XXII, and deny that Arizona's position is sustained by this Court's decision in *Arizona v. California*, 292 U. S. 341, or in any other decision. Allege that the controversy, as disclosed by the pleadings filed to date, is summarized in Exhibit "A" annexed to Defendants' Answer to the Petition of Intervention in behalf of the United States and herein incorporated by reference as though fully stated.

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July, 1954.

No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1954

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS.

UNITED STATES OF AMERICA, INTERVENER,

STATE OF NEVADA, INTERVENER.

ANSWER OF THE STATE OF NEVADA TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA

I

The State of Nevada admits the allegations contained in Paragraphs I to VIII, inclusive, of the Petition of Intervention of the United States.

II

Answering Paragraph IX of the petition of the United States, the State of Nevada admits the allegations contained therein; however, in connection with said admission, Nevada alleged in Paragraph VIII of its Petition of Intervention as follows: Article III(b) of said Compact provides that in addition to the apportionment of water in Article III(a) "the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one

million acre-feet per annum." No joint action by the Lower Basin States by negotiated Compact, Agreement, or by any other method has ever been initiated or taken to increase the beneficial consumptive use of said water within said basin by one million acre-feet or in any other amount whatsoever. The State of Nevada alleges that before any Lower Basin State can acquire the right to use said water, authoritative concerted action by the Lower Basin States must first be had giving the right to increase the beneficial consumptive use of water within said lower basin to the extent of an additional one million acre-feet of water as provided in said Article III(b), and that an equitable apportionment thereof to each of said States, by compact or agreement between such States, or by such other equitable action as will apportion said water is a necessary condition precedent. The State of Nevada further alleges that it is entitled to its equitable share in said water in addition to its equitable share of the water apportioned to the Lower Basin in Paragraph III(a). Nevada here reaffirms its position as alleged in said Paragraph.

III

The State of Nevada admits the allegations contained in Paragraphs X, XI, XII, XIII and XIV, of the Petition of the United States.

IV

Answering Paragraphs XV, XVI, and XVII of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained; however, in connection with said admission, Nevada alleges that the use of the waters of the Colorado River Stream System by the State of California is subject to and limited by the Colorado River Compact, the Project Act, and the Limitation Act to the quantities of water therein set forth, and that contracts between the United States of America and the various defendant contracting agencies are upon the express condition and with the express understanding that all rights under such contracts are subject to and governed by the Colorado River Compact, which Compact was approved in Section 13(c) of the Boulder Canyon Project Act.

V

Answering Paragraph XVIII of the Petition of the United States, the State of Nevada alleges that it is presently under a contract with the United States, dated January 3, 1944, amending a prior contract dated March 30, 1942, whereby the United States shall, from storage in Lake Mead, and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, deliver to the State each year not to exceed three hundred thousand (300,000) acre-feet of water, inclusive of all other waters diverted for use within the State from the Colorado River Stream System. That neither the said contract with the United States of June 30, 1942, nor the contract of January 3, 1944, contains any limitation whereby the right of the State of Nevada to contract for the delivery of additional water over and above three hundred thousand (300,000) acre-feet, and neither is said State by reason of said contracts prohibited from asserting claims to the right to use of the waters of the Colorado River Stream System over and above three hundred thousand (300,000) acre-feet of water.

VI

Answering Paragraph XIX of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained.

VII

Answering Paragraph XX of the Petition of the United States, the State of Nevada admits the allegations therein contained, but in connection with said admission, Nevada alleges that the Secretary of the Interior in the execution of said contracts providing annually eight million four hundred sixty-two thousand (8,462,000) acre-feet of water at Hoover Dam included therein the one million (1,000,000) acre-feet of water provided for in Article III(b) of the Colorado River Compact as and for an additional amount of water for beneficial consumptive use in the Lower Basin over and above the seven million five hundred thousand (7,500,000) acre-feet apportioned to the Lower Basin by Article III(a), without the necessity for such increase in the beneficial consumptive use of said III(b)

water being first shown and determined by all of the States in the Lower Basin by negotiated Compact, agreement or by any other method, whereby authoritative concerted action of said States increased such beneficial consumptive use in said Lower Basin and equitable apportionment thereof to each Lower Basin State being had in accordance with said Article III(b), and Nevada has so alleged in Paragraph VIII of its Petition of Intervention. Further, Nevada here refers to and adopts the allegations contained in Paragraph I, page 1, of its Reply to California's Answer to Nevada's Petition of Intervention.

VIII

Answering Paragraphs XXI, XXII, XXIII, XXIV, XXV, and XXVI, of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained.

IX

Answering Paragraph XXVII of the Petition of the United States, the State of Nevada admits the allegations therein contained, and in connection with said admission Nevada alleges that all the beneficial consumptive uses of the waters of the Colorado River Stream System by the Indians and Indian tribes under the United States as trustee or otherwise, is and shall be chargeable to the share thereof to which each State signatory of the Colorado River Compact is entitled; and Nevada further alleges that the appropriation and apportionment of said waters shall be had in strict accordance with the water law of appropriation of water for beneficial consumptive use in the particular State in which said use is had or contemplated, therefore, Nevada denies that the United States as trustee or otherwise is entitled to or obligated to annually divert as its water the acre-feet of water set forth in Appendix II, pages 56 and 57 of its Petition.

X

Answering Paragraph XXVIII of the Petition of the United States, the State of Nevada:

(a) Denies that any treaty to which the United States is a party authorizes it to make consumptive use of the water of the Colorado

River System for the support of fish or wildlife, and alleges that no treaty or federal statute has undertaken to authorize any officer of the United States so to do.

(b) Alleges that the United States, in Sections 8(a) and 13(b), (c), and (d) of the Boulder Canyon Project Act, subjected its rights and the rights of those claiming under it to the Colorado River Compact, and that these statutory provisions are applicable to uses for the benefit of fish and wildlife.

(c) Alleges that, pursuant to the provisions of Article IV of the Colorado River Compact, if any right exists to the consumptive use of water for the support of fish and wildlife, such right is subservient to the use and consumption of water for agricultural and domestic purposes and for the generation of electric energy, and that the rights of the State of Nevada are of these dominant categories.

(d) Alleges that if the United States has rights to the consumptive uses of water for the support of fish and wildlife, such uses are chargeable under the Colorado River Compact to the Basin and to the State in which such uses are situate, and, at least, to the extent that such rights existed on November 24, 1922, are chargeable under Article III(a) of the Compact.

XI

Answering Paragraph XXIX of the Petition of the United States, the State of Nevada admits all and singular the allegations therein contained.

XII

Answering Paragraph XXX of the Petition of the United States, the State of Nevada admits, denies and alleges with respect thereto as follows: Nevada admits that the United States alleges that it asserts claims against the parties to the Cause to the use of the waters of the Colorado River Stream System for the purposes of securing for its use, quantities of water to satisfy the maximum legal demands it is allegedly charged with and accountable for, but in connection with this said admission Nevada states that it has not sufficient knowledge or information upon which to base a belief and therefore denies all and singular the allegations therein contained, save and except,

(1) as its duty may arise in fulfilling its obligation to deliver to Mexico, water of said Stream System in accordance with the treaty provisions now existing between the United States and Mexico; (2) to fulfill its obligations in the delivery of water and power pursuant to valid contracts therefor; (3) as its obligations as trustee for the Indians and Indian Tribes with respect to the use of waters of the said Stream System may arise; however, such obligations as trustee for the use of such waters is to be exercised as set forth in Paragraph IX, ante this Answer; and (4) to exercise its lawful power with respect to flood control and navigation.

XIII

Answering Paragraph XXXI(a) of the Petition of the United States, the State of Nevada admits that the United States is a party to the treaties and international conventions alluded to in said paragraph, admits that the Colorado River Compact is a valid and binding covenant among all the States in the Colorado River Basin and alleges that its terms are also binding upon the United States and the Congress thereof. Nevada further admits that the Federal and State legislation mentioned in said paragraph are presumed to be valid enactments and enforceable, but that all of said acts are subject to interpretation and judicial determination. The State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies that each and every contract entered into by the United States of America involving the use and delivery of water or electric power pursuant to its aforesaid compacts and legislation, are valid, binding covenants constituting the measure of the rights of the parties thereto.

It appears that Paragraph XXXI(b) does not require an answer on the part of the State of Nevada.

XIV

Answering Paragraph XXXII-(1)-(2)-(3) of the Petition of the United States, the State of Nevada here refers to and adopts as if here set forth verbatim, each and every allegation therein contained

as set forth in Paragraph XVIII, pages 19 and 20, of Petition of Intervention of the State of Nevada relating to (1) Article III(b) water, (2) the measure of beneficial use of water, and (3) the measure and the charge of evaporation losses.

XV

Answering Paragraph XXXIII of the Petition of the United States, the State of Nevada admits that the questions propounded by the State of Arizona and the correlative injuries presented by the California defendants in their respective pleadings heretofore filed in this Cause and as now presented by the State of Nevada in its Petition of Intervention and in its Reply to the Answer of California defendants filed in this Cause, contain allegations and contentions of said parties and require the determination thereof by the Court. Nevada further alleges that the right to the use of the waters of the Colorado River Stream System sought by Nevada will not injure any right of the United States.

XVI

Answering Paragraph XXXIV of the Petition of the United States, the State of Nevada alleges that all of the rights of the United States involved in instant Cause, are subject to and controlled by the Colorado River Compact as particularly provided in Section 8 of the Boulder Canyon Project Act.

XVII

Answering Paragraph XXXV of the Petition of the United States, the State of Nevada admits that there is a conflict between the States of Arizona and California with respect to the validity and interpretation of the contracts therein mentioned with respect to the delivery of Colorado River water to the respective States, and in this connection Nevada alleges that in and by its Petition of Intervention and its Reply to the Answer of California filed herein, it makes claim to additional water of said river, which said claim is also in conflict with the claims of Arizona and California, all of which will

require interpretation by the Court. Nevada further alleges that it is and will be necessary for the Court to resolve the conflicts between the parties, including the United States, and determine the meaning and effect of the Colorado River Compact thereon.

XVIII

Answering Paragraph XXXVI of the Petition of the United States, the State of Nevada admits that there is a controversy between the States of Arizona and California with respect to the Colorado River Compact and the validity of the contract for the delivery of water between the United States and Arizona, the resolving of which will require the determination by the Court.

XIX

Answering Paragraph XXXVII of the Petition of the United States, the State of Nevada here refers to the allegations relating to the right to the use of the waters of the Colorado River Stream System by Indians and Indian tribes under the United States as trustee or otherwise, all as set forth in Paragraph IX, ante, this Answer.

WHEREFORE, The State of Nevada respectfully prays:

That the rights of the States of Arizona, California, Nevada, New Mexico, Utah and the United States of America in and to the use of the waters of the Colorado River Stream System be adjudicated, determined and forever set at rest.

W. T. MATTHEWS,
Attorney General of Nevada.

ALAN BIBLE,
Special Assistant Attorney General of Nevada.

WILLIAM J. KANE,
Special Assistant Attorney General of Nevada.

GEO. P. ANNAND,
Deputy Attorney General of Nevada.

WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada.

JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

IN THE

Supreme Court of the United States

October Term, 1954

No. 10, ORIGINAL

STATE OF ARIZONA,

v. *Complainant*

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA. *Defendants*

UNITED STATES OF AMERICA, INTERVENER.

STATE OF NEVADA, INTERVENER.

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Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER
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Arizona Interstate Stream Commission

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HOWARD E. THOMPSON
Special Assistant Attorney General of Arizona

RESPONSE OF COMPLAINANT STATE OF ARIZONA TO DEFENDANTS' MOTION TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH, AND WYOMING.

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Defendants

UNITED STATES OF AMERICA, INTERVENER.

STATE OF NEVADA, INTERVENER.

RESPONSE OF COMPLAINANT STATE OF ARIZONA TO DEFENDANTS' MOTION TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH, AND WYOMING.

The Complainant, State of Arizona, by its duly authorized Attorneys, respectfully submits its response to the motion by Defendants to join as parties the States of Colorado, New Mexico, Utah and Wyoming.

1.

Responding to Paragraph 1 of said motion, Complainant admits that the four States of Colorado, New Mexico, Utah, and Wyoming are parties to the Colorado

River Compact, and admits that the State of Nevada sought leave to intervene in this case as a party, which motion was granted.

Complainant admits that the construction and interpretation of portions of the Colorado River Compact affecting the Lower Basin only are in controversy in the present case, but denies that any decree determining the meaning and effect of that Compact considered as a contract cannot be fully effective in the absence of the other States who are not presently parties to this litigation.

Complainant denies that the principal issues and interpretation of the Colorado River Compact are as stated in Defendants' Exhibit A, Summary of the Controversy, appended to said motion, which Exhibit is incorporated as a part of said motion. Complainant alleges that the true issues involved in the controversy are as hereinafter set forth, and in the other pleadings filed by Complainant.

2.

Complainant admits that the States of New Mexico and Utah are States of the Upper Division, as well as States which are, in part, within the Lower Basin, as those terms are defined by the Colorado River Compact. Complainant admits that Nevada sought leave to intervene, which motion was granted.

Complainant denies that the States of New Mexico and Utah are indispensable parties to a full resolution of a controversy between Complainant and Defendants.

Further responding to Paragraph II of said motion, Complainant denies all of the allegations thereof, except as admitted in this response, or in the other pleadings filed herein by Complainant.

3.

Responding to Paragraph III of said motion, Complainant denies all of the allegations thereof, except as admitted in this response or in the other pleadings filed herein by Complainant.

Complainant specifically denies the existence of a "Statutory Compact" between the United States and California or any compact precluding the State of Arizona from ratifying the Colorado River Compact, as alleged in Paragraph 13 of the Bill of Complaint.

4.

Responding to Paragraph IV of said motion, Complainant denies the allegations thereof, except as admitted in this response, or in other pleadings filed by Complainant.

5.

Responding to Paragraph V of said Motion, Complainant denies the joinder of the States of Colorado, New Mexico, Utah, and Wyoming is justified by the records, files and pleadings herein, and denies that such States are indispensable parties to a decree in this case. Complainant further denies that the States of Colorado, New Mexico, Utah and Wyoming, as States of the Upper Division, or as States of the Upper Basin, as defined by the Colorado River Compact, are proper, necessary or indispensable parties to this action. Further answering Paragraph V of said Motion Complainant alleges that the States of New Mexico and Utah, as States of the Lower Basin, have not made any application to intervene in this action and further alleges that they are not necessary or indispensable parties to any decree that may be entered herein. (See Nebraska vs. Wyoming, 295 U.S. 40 at Page 43) Com-

plainant further alleges that the only interests which the States of New Mexico or Utah, as States of the Lower Basin, might have in this litigation are as set forth in this Response, the Analysis of the Summary of the Controversy appended hereto and marked Exhibit 1, and the other pleadings filed by Complainant herein.

Complainant, as heretofore admitted, alleges that the State of Nevada, as a Lower Basin State, filed a motion for leave to intervene in this action, which motion has been granted by the Court, and Complainant further alleges that neither the States of New Mexico nor Utah, as States of the Lower Basin nor the States of Colorado, New Mexico, Utah or Wyoming, as States of the Upper Basin, or as States of the Upper Division, have moved to intervene in this action, and such States do not desire to become parties to this action and have indicated that they will resist this motion, as hereinafter alleged in Paragraph 13 hereof.

6.

Complainant alleges that this litigation involves only the right to the use of the waters of the Colorado River System after the same have passed Lee Ferry, Arizona, or which originate on tributaries in the Lower Basin. None of the parties to the action has questioned the right of the Upper Basin States to the beneficial consumptive use of 7,500,000 acre-feet of the waters of such system per annum as apportioned to the Upper Basin by the Colorado River Compact, subject to the obligations and burdens imposed by Article III (c) and Article III (d) of said Compact.

Complainant further alleges that although a majority of the waters of the Colorado River System are developed in the Upper Basin States, and the system drains a considerable area therein, this fact does not make

such States indispensable parties in an action to determine rights to use of waters below Lee Ferry, Arizona, the dividing point between the Upper and the Lower Basins.

7.

Complainant alleges that the principal uses by the State of New Mexico of Lower Basin waters are from the Gila River and its tributaries in New Mexico. Complainant further alleges that such uses are governed and controlled by a decree of the United States District Court for the District of Arizona, and such uses cannot be extended or increased without a modification of said decree.

8.

Complainant alleges that the only uses of waters from the Colorado River System by the State of Utah in the Lower Basin are on the Virgin River within that State, and the Complainant is presently engaged in negotiating a compact with that State respecting such uses, and that there is no dispute existing between Complainant and the State of Utah.

9.

Complainant alleges that in Section 7 (g) of the contract between Arizona and the United States, dated February 9, 1944, the full text of which appears as Exhibit C in the Bill of Complaint, Complainant expressly recognizes the rights of New Mexico and Utah to an equitable share of the waters apportioned by the Colorado River Compact to the Lower Basin, and also waters unapportioned by such Compact.

The Complainant further alleges that in its Bill of Complaint it recognizes the rights of the States of Utah and New Mexico to waters of the Lower Basin.

In its Bill of Complaint Complainant set forth three basic issues which must be determined as follows:

(a) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?

(b) How is the beneficial consumptive use of water in the Lower Basin to be measured?

(c) How are evaporative losses from Lower Basin main-stream reservoirs to be charged?

Defendants have raised three additional questions; namely,

(a) Is Arizona a party to, and bound by, the Colorado River Compact?

(b) May Arizona place reliance upon and receive benefits under the California Limitation Act?

(c) The relative priorities of contracts between the United States and water users in the Lower Basin.

A determination of these questions can have no effect upon the States of Colorado, New Mexico, Utah, and Wyoming.

11.

As of October 11, 1948 the five Upper Basin States as defined by the Colorado River Compact, executed the Upper Colorado River Basin Compact. By said Compact the States of the Upper Basin:

(a) Apportioned the waters available to that Basin under the Colorado River Compact.

(b) Defined beneficial consumptive use in terms of man-made depletions as contended for by Complainant.

(c) Recognized the obligations imposed upon the States of the Upper Division by Article III of the Colorado River Compact, including the obligation to refrain from depleting the flow of the river at Lee Ferry below an aggregate of 75 million acre-feet for any period of ten consecutive years.

(d) Determined how reservoir losses should be charged in the Upper Basin.

(e) Agreed that the consumptive use of water by the United States of America or any of its agencies, instrumentalities, or wards shall be charged as a use by the State in which the use is made.

12.

The Upper Colorado River Basin Compact has been duly approved by the Legislatures of each of the Upper Basin States, and by the Congress of the United States. By the execution of such Compact the States of the Upper Basin have resolved and settled any differences or disputes which may, at any time, have existed among them, and any decision by this Court dealing solely with waters of the Colorado River System below Lee Ferry cannot, in any manner, affect the States of Colorado, New Mexico, Utah, and Wyoming.

13.

This action was commenced on August 13, 1952, when Complainant filed its Motion For Leave To File Bill of Complaint and Bill of Complaint, which motion was granted on January 19, 1953. Since that date Defendants have filed numerous and voluminous pleadings in this cause, and the present motion to join as parties the States of Colorado, New Mexico, Utah, and Wyoming is only dilatory in nature, and designed to prolong this controversy.

Any delay in determination of the issues in this case can benefit only the State of California and water users therein, since facilities for the diversion of water of the Colorado River System for use in California have already been constructed with a capacity far in excess of the 4,400,000 acre-feet per annum authorized by Boulder Canyon Project Act and California Limitation Act. Defendants are admittedly increasing their uses annually, and will thereby attempt to establish rights to the use of the Colorado River System water to the detriment of the other States within that river basin, and particularly, Complainant State of Arizona.

If the aforementioned States are made parties to this litigation, such action will seriously interfere with, and perhaps prevent, the enactment of S. 1555, a measure now pending before the Congress of the United States to authorize the Upper Basin Storage Project.

The Upper Colorado River Commission, an Interstate Administrative Agency, duly created by Article VIII of the Upper Colorado River Basin Compact, has adopted a resolution finding that the Upper Division States are ~~not indis~~pensable parties in this action, and recommending that none of them seek leave to intervene herein, and that each resist any effort to be joined in this case.

On numerous occasions representatives of the State of California, and various other defendants herein, have stated that the only three points of dispute between Arizona and the Defendants are those set forth in the Bill of Complaint; some of such statements are as follows:

Excerpt from letter of Governor Earl Warren to Hon. Joseph C. O'Mahoney, Chairman, Senate Committee on Interior and Insular Affairs, in the Hearings before the Committee on Interior and Insular Affairs

of the United States Senate on S.75 and S.J.Res.4, in March, April and May, 1949, at Page 915 thereof:

"... The future economic development of the lower-basin States is dependent upon a solution of the existing controversy. The Secretary of the Interior has recognized the necessity of a determination of the controversy in order to permit further development of the water resources of the Colorado River by the Federal Government.

Since the major issues of the controversy are matters of law and not of fact, it is probable that within a comparatively short time the Court could hear legal arguments, without the necessity of taking extended evidence regarding facts, and adjudicate the rights of the affected States promptly. I believe the case could be presented to the Court on an agreed statement of facts. Each year that the settlement of the controversy is delayed means additional years of delay in the development of the areas affected by the use of Colorado River water."

Of similar import are:

A letter dated May 8, 1948 written by Governor Warren to Hon. Clifford P. Case, Chairman of the House Judiciary Sub-Committee, as contained in Hearings before Sub-Committee No. 4 of the Committee of the Judiciary House of Representatives on H.J. Res. 225, 226, 227, 236 and H.R. 4097 in May of 1948 at Page 5 thereof:

"... I am convinced that the litigation can be conducted and concluded within a brief time, because the essential issues between the States are legal in character, and do not involve interminable examination of factual evidence. I believe the case could be presented to the Court on an agreed statement of facts. To the end that there may be a speedy determination of the case, I am willing to undertake that in the event the Congress authorizes the suit, the proceedings on

California's part will be carried on with all possible promptness."

On the same page of the above hearings immediately following the letter to the Hon. Clifford P. Case, is another letter written by Governor Warren to Governor Sidney P. Osborn, Governor of Arizona, dated March 5, 1947. In this latter letter Governor Warren first urges that the controversy be arbitrated, and if arbitration is not possible or feasible, that:

"... I propose that we join in requesting Congress to authorize a suit to determine our rights in the Supreme Court of the United States, which suit could, if agreeable to the States, be submitted on an agreed statement of facts."

Mr. Northcutt Ely, Assistant Attorney General, appearing for Defendant State of California, in testifying in Hearings before Sub-Committee No. 4 of the Committee on the Judiciary of the House of Representatives on H.J. Res. 225, 226, 236 and H.R. 4097 in May of 1948, at Page 32 thereof said:

"... We believe the questions required to be presented to the Supreme Court in this matter are all questions of law, interpretation of statutes, compacts, and documents of which the Court would take judicial notice, and that no protracted case or hearing shall be involved, of the character of which the committee has probably heard or may be familiar, with respect to Kansas v. California, (sic), or Wyoming v. Colorado, and the other long-drawn-out adjudication cases."

Again, Mr. Ely testifying before the same Committee in the same report, on Page 93 thereof said:

"We feel that the decision can be obtained within a reasonable time, within 1 or 2 years at the most; that the taking of protracted testimony will not be required and that the submission of this case to the Court will advance the cause of the development of the Colorado River. We see no advantage in delay."

Nothing is gained by risking these great works without a decision. The decision is inevitable. The day of shortage must come; let the decision be made before new works are built, not after."

Again, Mr. Ely, testifying at the same hearing (testimony appearing on Page 94) in answer to a question propounded by Mr. Case, Chairman of the Committee, said:

"Mr. Chairman, if the Court should resolve the questions of interpretation involved in these three points, the engineers may very readily calculate the quantities of water available for each State under them if the rules are once laid down by the Supreme Court. The engineers can apply them without particular difficulty."

Also note Mr. Ely's testimony, appearing on Page 35 of Hearings before a Subcommittee of the Committee on Interior and Insular Affairs of the United States Senate, 80th Congress on S.J. Res. 145, May 10-14 inclusive, 1948:

"As far as California is concerned, the issues which must necessarily be litigated are the three which are directly translatable into large quantities of water: The issue of consumptive use versus depletion; the status of the waters referred to in Article III (b) of the compact, and the issue of the accountability for reservoir losses. All of these are matters of statutory construction or of contract law insofar as the California Limitation Act constitutes a contract between the Congress and the Legislature of California. None of them presen t issues of fact or require the taking of testimony. California pledges her energies to an expeditious conclusion of the case."

Of like import there is testimony of Mr. Ely given before various Committees of Congress on Hearings on the Central Arizona Project Bill, S.75, and the so-called Suit Resolutions. Again and again Mr. Ely has

taken this same position, to wit; The only questions involved in this controversy are questions of law that can be determined by the Court without the necessity of the taking of any testimony whatsoever and that they are susceptible of an early determination.

The same position was taken by Mr. Arvin B. Shaw, Jr., Assistant Attorney General of California, in a brief filed by Mr. Shaw, Fred M. Hauser, Attorney General of California, and Allen Bible, Attorney General of Nevada, in Hearings on S.J. Res. 145 before a Sub-Committee of the Committee on Interior and Insular Affairs of the United States Senate, 80th Congress, May, 1948 at Page 69. Quoting from that brief:

> "From the foregoing review of major issues, it is plain that the matters in controversy between Arizona and California are characteristically legal issues, being matters of interpretation of statutes and other documents. The ordinary factual elements, relating to quantities and time of flow and use, which characterize most water litigation are not to any substantial extent erifical factors.
>
> It is true that some of the classic interstate water cases, such as Kansas v. Colorado (206 U.S.46); Wyoming v. Colorado (259 U.S.419), and Nebraska v. Wyoming and Colorado (325 U.S.589), have required 10 years or more to reach adjudication. This has occurred because in each of these cases it was necessary for the court to appoint a master to take voluminous testimony relative to factual issues. In the case at bar it is not considered that a master need be appointed, nor that factual testimony be taken. The issues which are significant as between California and Arizona can be adjudicated, upon briefs and oral argument, within a reasonable time, not to exceed 2 to 3 years."

Mr. James H. Howard, Chief Counsel for Defendant Metropolitan Water District of Southern California, testifying before the Sub-Committee of the Committee

on Interior and Insular Affairs of the United States Senate, 80th Congress, on S.J. Res. 145, Page 105, said:

> "... It will not be necessary, in the proposed litigation, to determine any factual issues. Both Arizona and California use the same basic water-supply figures as determined by the United States Bureau of Reclamation and the United States Geological Survey. The differences between the States arise out of the application of the contract documents referred to, as they affect the distribution between the States, of water available for use in the lower basin."

Again, Mr. Howard, testifying before the Sub-Committee of the Committee on Interior and Insular Affairs of the United States Senate, 80th Congress, on S.J. Res. 145, on page 120, in answer to a question by Senator O'Mahoney as to whether any of the other basin states would be involved, stated:

> "So far as California is concerned, I think the answer is 'No'. We have no controversy with any of the upper basin States that requires any judicial examination. Both Arizona and California concede that Nevada should have 300,000 acre-feet, and a fraction of excess or surplus, whatever it is, set up in their contracts. So that the real battle is between Arizona and California."

And again, on the same page, in reply to another question by Senator O'Mahoney, Mr. Howard stated:

> "As Mr. Ely said a few minutes ago, so far as California is concerned, we would be willing to submit the case to the court on a stipulation just calling for the interpretation of those three issues."

These are but a few of the many instances in which officials and representatives of Defendants, particularly Defendant State of California, have urged a submission of this controversy to the Supreme Court in order that it might be determined and have stated that such controversy could be acted on by the Court without

the necessity of taking any factual evidence and that such controversy involved only the three questions of law that Complainant in its Complaint asked the Court to resolve, to wit:

1. Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?
2. How is the beneficial consumptive use of water apportioned by the Compact to be measured?
3. How are evaporation losses from Lower Basin main-stream reservoirs to be charged?

WHEREFORE, Complainant prays that the Motion of Defendants to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming, be denied.

Respectfully submitted,

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THEODORE KIENDL
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PERRY M. LING
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HOWARD F. THOMPSON
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EXHIBIT I.

ANALYSIS OF SUMMARY OF CONTROVERSY SET FORTH AS EXHIBIT A TO DEFENDANTS' MOTION TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH, AND WYOMING.

As Exhibit A to the foregoing motion Defendants have appended a so-called "Summary of the Controversy"; an analysis of this summary discloses the questions raised by the Defendants are primarily questions of law, immaterial to the determination of the issues presented in the pleadings, and can have no effect whatsoever upon the States of Colorado, New Mexico, Utah, and Wyoming. Complainant will analyze the various questions raised under the same headings as presented in the "Exhibit A" to the motion.

I. The Quantities of Water in Controversy

Under this heading Defendants have set forth what they claim to be the quantity of water sought by the various parties to this action. The sole question involved is a definition of "beneficial consumptive use". This is purely a legal question affecting only the States of the Lower Basin, since the Upper Basin States have, by the Upper Colorado River Compact, agreed that this phrase should be defined in terms of man-made depletions.

II. Ultimate Issues

Under this heading Defendants have attempted to set forth what they consider to be ultimate issues involved in this action. None of the statements made, or the questions propounded, can have any effect whatsoever upon the States of Colorado, New Mexico, Utah, and Wyoming.

The United States

As far as the Upper Basin States are concerned, all of the matters raised by Defendants under this subheading have been settled and resolved by Article VII of the Upper Colorado River Basin Compact, wherein it was agreed that the consumptive use of water by the United States of America, or any of its agencies, instrumentalities, or wards, shall be charged as a use by the State in which the use is made.

Arizona

The question of Arizona's right to quiet title to 3,800,000 acre-feet per annum of the beneficial consumptive use of waters of the Colorado River Water System, subject to the availability thereof under the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act, cannot, in any manner, affect the States of Colorado, New Mexico, Utah, and Wyoming, since Arizona's claims are based solely on waters of the River System below Lee Ferry, Arizona. Any dispute between Arizona, California, and Nevada as to waters below Lee Ferry cannot, in any manner, involve the States of Colorado, New Mexico, Utah, and Wyoming.

California

The validity and enforceability of the contracts between the United States and the Defendants' public agencies of California for the storage and delivery of water requires only an interpretation of those contracts and related documents. Such contracts are for the delivery of water from storage in Lake Mead below Lee Ferry, Arizona, and cannot involve any of the States of the Upper Division.

Nevada

The claims of the State of Nevada relate only to waters of the Colorado River Water System apportioned to the Lower Basin, and a determination of such claims cannot, in any way, affect the States of the Upper Division.

Interests of Other States

The principal issues presented by the pleadings heretofore filed herein are as follows:

(a) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?

(b) How is the beneficial consumptive use of water in the Lower Basin to be measured?

(c) How are evaporative losses from Lower Basin main-stream reservoirs to be charged?

(d) Is Arizona a party to, and bound by, the Colorado River Compact?

(e) May Arizona place reliance upon and receive benefits under the California Limitation Act?

(f) The relative priorities of contracts between the United States and water users in the Lower Basin.

As heretofore pointed out, none of these issues can affect the States of Colorado, New Mexico, Utah, and Wyoming. Certainly these states have no interest in the waters apportioned by Article III (b) of the Colorado River Compact since that apportionment was expressly made to the Lower Basin. By the Upper Colorado River Compact the aforementioned States have agreed that the term "beneficial consumptive use" is to be measured by man-made depletions, and they have also agreed how reservoir losses are to be charged in the Upper Basin.

Whether Arizona is a party to, and bound by, the Colorado River Compact does not concern the aforementioned States since they have all ratified such Compacts and are bound thereby. Whether Arizona may rely upon the California Limitation Act is immaterial in respect to Defendants' motion since the States of Colorado, New Mexico, Utah, and Wyoming are expressly named as beneficiaries in such Act. The relative priority of the various contracts between the United States and water users in the Lower Basin do not concern the States in question since such contracts deal solely with waters in the River System below Lee Ferry, Arizona.

III. Factual Issues

None of the issues raised under this sub-heading concern the States of Colorado, New Mexico, Utah, and Wyoming, since they relate to waters of the Lower Basin, or to questions which have been resolved and agreed upon in the Upper Colorado River Basin Compact.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty

All of the questions raised by Defendants under this sub-heading are purely legal in character. This is obvious from the very language used in the sub-heading itself. These questions can be resolved and determined by an interpretation and construction of the various documents mentioned, and such interpretation can, in no way, involve the States of Colorado, New Mexico, Utah, and Wyoming.

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STATE OF ARIZONA, Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, Defendants.

UNITED STATES OF AMERICA, Intervenor.

STATE OF NEVADA, Intervenor.

REPLY OF THE STATE OF NEVADA TO ANSWER OF THE STATE OF ARIZONA TO PETITION OF INTERVENTION OF THE STATE OF NEVADA

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Traverse

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UNITED STATES OF AMERICA, Intervener,

STATE OF NEVADA, Intervener.

REPLY OF THE STATE OF NEVADA TO ANSWER OF THE STATE OF ARIZONA TO PETITION OF INTERVENTION OF THE STATE OF NEVADA

Comes now the State of Nevada and for its Reply to the Answer of the State of Arizona, admits, denies and alleges as follows:

Answer to First Affirmative Defense.

I

Answering the First Affirmative Defense of the Complainant as set forth on Page 1 of its Answer, the State of Nevada admits that pursuant to its Contract with the United States, dated January 3, 1944, it is entitled to the delivery of water not to exceed 300,000 acre-feet of water from the Colorado River Stream System. However, in connection with said admission, Nevada alleges there is no

provision in said contract nor any statute pertaining thereto that prohibits Nevada from making claim for additional quantities of the waters of the Colorado River Stream System.

II

Answering Paragraphs Nos. 1, 2, 3, 4 and 5 of Complainant's First Affirmative Defense, the State of Nevada alleges that on or about the 15th day of February, 1954, the Complainant filed in this Cause and interposed the Response of Complainant to Motion of State of Nevada for Leave to Intervene, and was directed against Nevada's Motion for Leave to Intervene and Nevada's Petition of Intervention filed therewith; that said Response in its entirety was and is in words and figures verbatim with the words and figures of said Paragraphs 1, 2, 3, 4 and 5; that said Response was submitted to and before this Court on and before June 1, 1954; that on said June 1, 1954, this Court entered its Order permitting the State of Nevada to intervene in said Cause upon the grounds and basis theretofore set forth in its said Petition to Intervene; that the said Paragraphs Nos. 1, 2, 3, 4 and 5 of Complainant's Answer have been overruled and therefore the said allegations do not now constitute a valid pleading of an affirmative defense.

ANSWER TO SECOND AFFIRMATIVE DEFENSE

III

Answering Paragraph 1 of Complainant's Second Affirmative Defense, the State of Nevada admits all and singular the allegations therein contained.

IV

Answering Paragraph 2 of Complainant's Second Affirmative Defense, the State of Nevada denies all and singular the allegations therein contained.

TRAVERSE

I

Answering Paragraph 3 of Complainant's Traverse, the State of

Nevada alleges that this Court in its Order of June 1, 1954, permitting Nevada to intervene in this Cause thereby ruled that Nevada was and is an indispensable party herein.

II

Answering Paragraph 4 of Complainant's Traverse, the State of Nevada alleges that it is entitled to the share of water set forth in its contracts with the United States of June 30, 1942, as amended by its contract of January 3, 1944, but in this connection it further alleges that there is nothing in said contracts limiting the right of the State of Nevada to contract for the delivery of additional water over and above the 300,000 acre-feet, and neither is said State by reason of said contracts prohibited from asserting claims to the right to use of the waters of the Colorado River System over and above 300,000 acre-feet of water.

III

Answering Paragraph 8 of Complainant's Traverse, the State of Nevada denies that the effect of Articles III(a) and III(b) of the Colorado River Compact are as set forth in Arizona's pleadings.

IV

Answering Paragraph 10 of Complainant's Traverse, the State of Nevada denies that the interpretation and construction of the documents referred to in Nevada's Petition are as set forth in Arizona's pleadings.

V

Answering Paragraph 11 of Complainant's Traverse, the State of Nevada denies that the construction and interpretation of the documents referred to in Nevada's Petition are as set forth in Arizona's pleadings.

The State of Nevada admits that no formal Compact was ever entered into among the States of Arizona, California and Nevada pursuant to the provisions of Section 4(a) of the Boulder Canyon Project Act, but denies that the State of Nevada accepted and approved the apportionment suggested therein by entering into its contract with the United States.

VI

Answering Paragraph 12 of Complainant's Tarverse, the State of Nevada denies that its rights to the beneficial consumptive use of the waters of the Colorado River System are as set forth in and limited by its contract with the United States.

VII

Referring to Paragraphs Nos. 13, 14, 15, 16, 18, 19, 20, 21, 22, 23 and 24 of Complainant's Traverse, the State of Nevada states that the matters and things therein alleged are drawn in issue by its Petition in Intervention and by reason thereof said paragraphs require no reply herein.

WHEREFORE, the State of Nevada reiterates its Prayer set forth in its Petition of Intervention heretofore filed in this Cause.

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UNITED STATES OF AMERICA, *Intervenor*,

STATE OF NEVADA, *Intervenor*.

Brief of the California Defendants in Support of Their Motion to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming

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UNITED STATES OF AMERICA, *Intervenor*,

STATE OF NEVADA, *Intervenor*.

Brief of the California Defendants in Support of Their Motion to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming

STATEMENT OF JURISDICTION

The four States of Colorado, New Mexico, Utah and Wyoming, which this motion seeks to join as necessary parties, are subject to the jurisdiction of this Court both as to service of process and venue, and the joinder of such States will not deprive this Court of original jurisdiction.

over the parties under Article III, Section 2, Clause 2, of the Constitution of the United States.

RULES, TREATIES, INTERSTATE COMPACTS AND STATUTES INVOLVED

Rules

Rule 9 of the Revised Rules of the Supreme Court provides in part:

> "3. The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court."

Rule 21 of the Federal Rules of Civil Procedure provides:

> "*Misjoinder and nonjoinder of parties.*—Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."

Rule 19 of the Federal Rules of Civil Procedure provides:

> "*Necessary joinder of parties.*—(a) *Necessary joinder.* Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.
>
> "(b) *Effect of failure to join.* When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without

depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

"(c) *Same—Names of omitted persons and reasons for non-joinder to be pleaded.* In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted."

Compact, Statutes, Treaty

The Colorado River Compact (H. Doc. 717, 80th Cong., 2d Sess., p. A17 (1948)). The full text appears in Appendix No. 1 to the Answer of the California Defendants to Arizona's Bill of Complaint. The provisions of that Compact primarily involved are quoted in the Statement of the Case.

The Boulder Canyon Project Act (Act of Dec. 21, 1928, 45 Stat. 1057). The full text of this statute appears in Appendix No. 2 to the Answer of the California Defendants to Arizona's Bill of Complaint. The provisions of that statute primarily involved are quoted in the Statement of the Case.

The California Limitation Act (Calif. Stats. 1929, Ch. 16, p. 38). The full text of that statute appears in Appendix No. 3 to the Answer of the California Defendants to Arizona's Bill of Complaint.

The Presidential Proclamation of June 25, 1929 (46 Stat. 3000). The full text of this proclamation appears in Ap-

pendix No. 4 to the Answer of the California Defendants to Arizona's Bill of Complaint.

The Mexican Water Treaty (U. S. Treaty Ser. No. 994, 59 Stat. 1219 (1945); H. Doc. 717, 80th Cong., 2d Sess. p. A831 (1948)). The full text of this Treaty appears as Appendix No. 29 of the Answer (in Volume II of the Appendixes).

The Upper Colorado River Basin Compact (Act of April 6, 1949, 63 Stat. 31) among the States of Arizona, Colorado, New Mexico, Utah and Wyoming. The full text of that Compact is printed as Appendix No. 30 of the Answer (Volume II of the Appendixes).

STATEMENT OF THE QUESTION PRESENTED

The question presented by this motion is:

Are the States of Colorado, New Mexico, Utah and Wyoming necessary parties to this action?

STATEMENT OF THE CASE

1. The Record to Date

The State of Arizona, invoking the original jurisdiction of this Court pursuant to the provisions of Article III, Section 2, Clause 2 of the Constitution of the United States, filed a motion for leave to file a bill of complaint in August, 1952, seeking certain equitable relief against the State of California and seven public agencies of California. Arizona's motion for leave to file was granted on January 12, 1953. The California Defendants answered the bill of complaint averring, among other things, four affirmative defenses (filed May 19, 1953). Arizona replied (filed August 28, 1953) and California made rejoinder (filed October 7, 1953).

On December 31, 1952, the United States of America filed a motion to intervene, which was granted (344 U.S. 919, Jan. 19, 1953). Subsequently, the United States filed

a petition in intervention (December 8, 1953) which was answered by Arizona (February 11, 1954) and the California Defendants (April 5, 1954).

On December 14, 1953, the State of Nevada filed a motion to intervene and a petition in intervention. Arizona in effect demurred (filed February 5, 1954), and the California Defendants made answer (filed April 5, 1954). Following the granting of Nevada's motion to intervene by this Court on June 1, 1954, *Arizona v. California*, 98 L. ed. (Advance p. 720), 1954), Arizona made answer (filed July 14, 1954).

By Order entered June 1, 1954 *Arizona v. California*, 98 L. ed. (Advance p. 720), 1954), this Court appointed George I. Haight, Esquire, of Chicago, Illinois, as Special Master in this cause.

On July 15, 1954, the California Defendants filed the present motion to join as necessary parties the States of Colorado, New Mexico, Utah and Wyoming. On the same date the California Defendants filed a motion for leave to file an amended answer to Arizona's bill of complaint and also filed an amendatory answer. On August 13, 1954, Arizona filed its response to the motion of the California Defendants to join the four named States.

2. The Relief Prayed by the Parties

Arizona

In its bill of complaint the State of Arizona prays, among other things, that its title to the annual beneficial consumptive use of 3,800,000 acre-feet of the waters of the Colorado River System (alleged to have been apportioned to the Lower Basin by the Colorado River Compact, and to consist of 2,800,000 acre-feet of the 7,500,000 acre-feet the use of which was apportioned by Article III(a), and all of the additional 1,000,000 acre-feet of uses referred to in Article III(b) of the Compact), be forever confirmed and quieted as against the Defendants, subject to certain rights in New Mexico and Utah, and that the Defendants be enjoined from asserting any claim to the contrary;

that the title of California to the annual beneficial consumptive use of waters of the Colorado River System apportioned by the Colorado River Compact to the Lower Basin be forever fixed and limited at 4,400,000 acre-feet; that, as to surplus waters unapportioned by the Colorado River Compact, the Court decree that when and if there is a further apportionment of such waters to the Lower Basin the State of California be entitled to one-half and the State of Arizona to the remainder less one-twenty-fifth to Nevada and less the undefined rights of Utah and New Mexico; that a decree be entered establishing that the beneficial consumptive use of water apportioned by the Colorado River Compact be measured in terms of man-made depletion of the virgin flow of the main stream; and that losses of water from reservoirs located on the main stream in the Lower Basin be charged against Arizona and California in proportion to their use of water stored in such reservoirs. To further these claims, Arizona seeks certain interpretations of the Colorado River Compact and the Boulder Canyon Project Act, related laws, contracts and documents.

California

In their answer the California Defendants deny the major allegations of the State of Arizona, and assert, among other things, the affirmative defenses that the Defendants have the right to the beneficial consumptive use of 5,362,000 acre-feet per annum of water of the Colorado River System under the Colorado River Compact, the Boulder Canyon Project Act, a Statutory Compact between the United States and California, and the water storage and delivery contracts of the United States executed pursuant thereto; that Arizona is estopped and precluded from asserting the interpretations of the laws and documents asserted in her bill of complaint; and that the Defendants have appropriative rights to the beneficial consumptive use of not less than 5,362,000 acre-feet of

Colorado River System water per annum as against all other parties.

NEVADA

The State of Nevada, in its petition of intervention, seeks to quiet title to 539,100 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact; to reserve for future agreement the disposition of the use of 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact and to assure to Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum, from all classes of water.

THE UNITED STATES

The United States of America, in its petition of intervention, asserts claims "as against the parties to this cause" of rights to the use of water in the Colorado River and its tributaries for the maximum legal demands of all projects in the Lower Basin to their full capacity for diversion, carrying and storage; to fulfill its obligations arising from its international treaties or conventions; to fulfill all of its contracts to deliver water and electric power; to fulfill the obligations emanating from its status as trustee for the Indians and Indian tribes; to protect its interests in fish and wildlife, flood control and navigation; and for use of the National Park Service, Bureau of Land Management, and Forest Service. The United States further alleges that these claims of Arizona and California far exceed the quantity of water apportioned to the Lower Basin of the Colorado River by the Colorado River Compact, and a resolution of the controversy between the parties "may therefore infringe upon the interests of the United States to its detriment". The United States claims rights to "annual diversions" in the Lower Basin for Indian uses in the amount of 1,747,250 acre-feet, and 76,000 acre-feet for fish and wildlife projects. The amounts of the other Federal claims are not stated.

The issues which involve the States of Colorado, New Mexico, Utah and Wyoming in this controversy arise primarily from the Colorado River Compact, which their representatives and those of Arizona, California, and Nevada signed on November 24, 1922, subject to ratification by the legislatures of all seven States and the consent of Congress, and from the Boulder Canyon Project Act, which granted the consent of Congress thereto upon certain conditions, which have themselves become the subject of controversy.

3. The Colorado River Compact

The agreement signed at Santa Fe in November 1922 was the resultant of two forces. One was the Lower Basin's imperative necessity for the construction of a great storage dam, a drive rooted in the need for flood and silt protection for the Palo Verde Valley and Imperial Valley, (the latter lying 300 feet below sea level) and projects in Arizona along the lower river; the need for stored water to replace natural flow which was being taken away from senior appropriators in California by junior appropriators in other parts of the Basin; and the need for an All-American Canal to replace the canal then serving the Imperial Valley via a route through Mexican territory. The counter-force was the demand of Colorado, New Mexico, Utah and Wyoming for protection against the law of appropriation. The Compact was negotiated in the light of the then recent decision of *Wyoming* v. *Colorado*, 259 U. S. 419 (1922), which applied the doctrine of "first in time, first in right" regardless of State lines. The four upper States knew that irrigators in Arizona and California, in the period 1877-1910, had already appropriated and were now using all the natural flow of the river, and that the junior appropriations in the Upper Basin were dependent upon the construction of storage works either in their basin or below. (California's answer to Arizona's complaint, par. 3)

The Compact, in short, was the price paid by the Lower Basin to the Upper for acquiescence in the construction of Hoover Dam.

Pertinent Provisions of the Compact

The Colorado River Compact deals, not merely with the main stream of the Colorado River, but with the "Colorado River System", which it defines, in Article II(a):

> "The Colorado River System means that portion of the Colorado River and its tributaries within the United States of America."

This definition includes the Gila River System in Arizona as well as the eight other major tributary systems which, all together, constitute the Colorado River System. As Arizona's Complaint correctly states (par. VII), "The Compact did not apportion water of the Colorado River System among the signatory States. Instead, it apportioned the beneficial consumptive use of stated quantities of water to the Upper Basin and the Lower Basin respectively."

It did more, however.

The Compact recognizes *rights* to the beneficial consumptive *use* of water in terms of "Basins"; *obligations*, with respect to the *delivery* of water, in terms of "Divisions". "Divisions" and "Basins" are defined as follows in Article II:

> "(e) The term 'States of the Upper Division' means the States of Colorado, New Mexico, Utah and Wyoming.
>
> "(d) The term 'States of the Lower Division' means the States of Arizona, California and Nevada.
>
> "(f) The term 'Upper Basin' means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee

Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

"(g) The term 'Lower Basin' means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry."

The four States named in the present motion thus constitute the "States of the Upper Division". But the "Upper Basin" includes portions of these States and a part of Arizona.

Two of the absent States, Utah and New Mexico, have areas (and rights) within the Lower Basin, together with Arizona, California, and Nevada; but only the three last named are "States of the Lower Division".

The *rights* of both Upper and Lower *Basins* are stated in Articles III(a) and III(b):

"(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

"(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum."

These rights are stated in terms of "use", not in terms of flow of the stream; in terms of demand, not in terms of supply. They apply to the waters of the Colorado River System, including the waters of all of its tributaries, not merely the waters of the main stream.

The term "beneficial consumptive use" is not defined. The *obligations* of the two *Divisions* are stated in Articles III(c), III(d) and III(e):

> "(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).
>
> "(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this Compact.
>
> "(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses."

Unlike the statement of rights in Article III(a) and III(b), these obligations are stated in terms of water, not use of water; in terms of supply, not in terms of demand. They relate to the flow at one place, Lee Ferry on the main stream, unlike Articles III(a) and III(b), which deal with uses throughout the Colorado River System, on the tributaries as well as on the main stream.

The Compact does not purport to deal with the use of all of the waters available in the System, but provides in Articles III(f) and III(g):

"(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

"(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America."

These provisions are permissive, not mandatory. There may or may not be another Compact in the future, and if one is negotiated, the parties may or may not conform to this pattern.

Throughout the Colorado River System certain protective provisions apply, stated in Articles VII and VIII:

"ARTICLE VII

"Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."

ARTICLE VIII

"Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the

Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

"All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate."

Article XI provides that the Compact shall be binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States.

4. Arizona's Rejection of the Compact

The equilibrium supposedly established in November 1922 between the Lower States and the Upper, between the present parties to this suit and the four absent States, collapsed in less than three months. The legislature of Arizona rejected the Compact. (Answer to Arizona's complaint, par. 18) The legislatures of the other six States ratified it.

The needs for flood protection, water and electric power in the Lower Basin continued to increase. In 1923 Los Angeles commenced surveys on the Colorado River aqueduct and in 1924 filed appropriations on the waters of the Colorado River. (Answer to Arizona's complaint, par. 45, and Exhibit A thereto)

Ratification by the Other States of a Six-State Compact: 1925-1929

Between 1925 and 1929, the Legislatures of California, Colorado, Nevada, New Mexico, Utah and Wyoming, abandoning hope of Arizona's ratification, enacted legislation, proposed by Colorado, reciprocally waiving the provisions of Article XI of the proposed Colorado River Compact (which made the Compact effective when ap-

proved by the Legislatures of seven states), and enacting that the Compact should become effective when six States should have ratified it and the Congress should have given its consent. It was submitted for the consent of Congress in that form. (Answer to Arizona's complaint, par. 19)

5. The Boulder Canyon Project Act

(Act of Dec. 21, 1928, 45 Stat. 1057)

On December 21, 1928, the President approved the Boulder Canyon Project Act. (Appendix No. 2) This statute, insofar as the present controversy is concerned, (1) authorized construction of a dam (now known as Hoover Dam) and power plant in Black Canyon or Boulder Canyon in the Colorado River, on the Arizona-Nevada boundary, and the All-American Canal to carry water into the Imperial and Coachella Valleys in California, adjacent to the Mexican border, (2) granted the consent of Congress to the Colorado River Compact on certain conditions, more particularly described below, (3) subjected the rights and operations of the United States to the Compact, (4) directed that no person should have the use of stored waters except pursuant to contracts with the Secretary of the Interior, and authorized him to make such contracts, and (5) specified the purposes for which the dam and its reservoirs should be used.

Alternative Consent to Seven-State or Six-State Compact by Congress

The Project Act superimposed new features in granting the consent of Congress to the Compact. It granted that consent to the Compact either as a seven-state agreement, or, in the alternative, as a six-state compact, conditioned, in the latter event only, upon the enactment by California of a statute in specified terms. Power was designated to the President to proclaim, after the expiration of six months, the effectuation and existence of either the seven-

state compact or the alternative six-state compact, but not both. The language of the statute in this respect reads:

> Sec. 4(a). (Par. 1): "This Act shall not take effect * * * unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and, for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."

(Paragraph 2 of this section authorized a compact among Arizona, California and Nevada, but it was not consummated.)

Sec. 13 (a). "The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, * * * is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided."

Sections 13 (b, c, d) of the Act subjected the United States and all those claiming under it to the Colorado River Compact.

6. The Statutory Compact Between the United States and California

THE QUANTITIES INVOLVED

The further restriction with which the California legislature was thus confronted was a serious one. California, in the present action, alleges that as of the date of signing the Compact (Nov. 24, 1922) her valid appropriations exceeded 6,000,000 acre-feet per annum, and that "present perfected rights" of projects then constructed and in operation in California required the beneficial consumptive use of more than 4,500,000 acre-feet per annum (Answer to Arizona's Complaint, par. 4), which had increased to 4,950,000 acre-feet at the effective date of the Project Act (June 25, 1929; Answer to Arizona's Complaint, par. 28). The limitation proposed by Congress was 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) plus not to exceed "one-half of the excess or surplus waters unapportioned by the Colorado River Compact". It omitted reference to the 1,000,000 acre-feet referred to in Article III(b), and the legislative history of the Project Act made it clear that Congress did not intend to exclude

California from participation in that "increase of use", but considered this quantity as part of the "excess or surplus waters unapportioned by the Compact", available "for use in California". The term "consumptive use" was defined as "diversions less returns to the river." The minimum requirements for beneficial consumptive use of the Palo Verde Valley, in which irrigation had been carried on since 1877, of the All-American Canal areas whose appropriative rights dated from 1893, and of the proposed Colorado River Aqueduct to the coastal plain, were known to aggregate about 5,400,000 acre-feet per annum. The limitation, if accepted, would require the abandonment of plans for California's other meritorious projects. (Answer to Arizona's Complaint, par. 28, 37.) Such a limitation had to be agreed to as the additional price for authorization of the dam and canal if Arizona continued to refuse to ratify the Seven-State Compact, but not if Arizona ratified. California's legislature provided for both contingencies.

California's Acceptance

The Legislature of California ratified the proposed Colorado River Compact both as a seven-state compact and as a six-state compact. (Calif. Stats. 1929, Ch. 4, p. 1; Stats. 1929, Ch. 15, p. 37; see Stats. 1929, Ch. 16, p. 38.) In a separate statute the California Legislature, in response to the first paragraph of Section 4(a) of the Boulder Canyon Project Act, on March 4, 1929, enacted a statute (Stats. 1929, Ch. 16, p. 38; sometimes referred to as the California Limitation Act, Appendix 3), to become effective only upon the ratification of the Colorado River Compact by six States, and its non-ratification by the seventh State (Arizona) within six months from December 21, 1928, and proclamation of the latter event by the President.

Proclamation of The Six-State Compact and Limitation Act by the President

On June 25, 1929 the President of the United States proclaimed that (a) seven States had not ratified the Colorado River Compact within six months from the date of the approval of the Boulder Canyon Project Act, but that (b) six states (including California) had ratified the compact and consented to waive the provisions of Article XI thereof requiring seven-state approval, as prescribed in Section 13 (a) of the Boulder Canyon Project Act; (c) that California had met the requirements set out in the first paragraph of Section 4 (a) of the Boulder Canyon Project Act necessary to render that act effective on six-state approval of the compact, and (d) all prescribed conditions having been fulfilled, the Boulder Canyon Project Act was effective June 25, 1929. (Appendix 4; 46 Stat. 3000.)

The Terms of the Resulting Statutory Compact

California alleges (Answer to Arizona's Complaint, par. 27) and Arizona denies (Reply to California's Answer, par. 27, 59), that upon the President's proclamation on June 25, 1929, the Boulder Canyon Project Act and the California Limitation Act thus established, by reciprocal legislation, a Statutory Compact between the United States and California which, on the one hand, restricted California's uses to the limits therein stated, but on the other hand authorized the United States to contract to presently deliver, and the defendants to receive, water from storage sufficient to make possible the beneficial consumptive use of the full quantities stated in the Statutory Compact. California says that these comprise the aggregate annual beneficial consumptive use of not to exceed:

> (1) Four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin by Article III (a) of the Colorado River Compact, plus

(2) One-half of all excess or surplus waters not apportioned by Article III(a) of the Colorado River Compact, including in said excess or surplus the waters referred to in Article III(b) of said Compact.

As previously noted, the absent States, together with Arizona and Nevada, are named as beneficiaries of this Statutory Compact.

7. The Boulder Canyon Project Contracts: Statutory Provisions

Section 4(b) of the Boulder Canyon Project Act required the Secretary of the Interior, before constructing Hoover Dam and the All-American Canal, to obtain contracts which would assure revenues to repay their cost.

Section 5 of the Project Act authorized the Secretary of the Interior to contract for the storage and delivery of water, and for the disposition of electric energy, in the following terms:

> "That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon for irrigation and domestic uses, and generation of electrical energy * * * upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of Section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of Section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

Section 6, Paragraph 1, governing the use of Hoover Dam and reservoir, provided in part as follows:

> "That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power * * *."

California's "present perfected rights", as previously stated, are alleged to be 4,950,000 acre feet as of June 25, 1929. (Answer to Arizona's Complaint, par. 28)

The Seven Party Agreement

In 1931, at the instance of the Secretary of the Interior, the State of California recommended an apportionment among California public agencies of such waters as might be available under the Colorado River Compact and the Statutory Compact (Answer, par. 32; Appendix 10). The total was held within 5,400,000 acre-feet (5,362,000) per annum, which represented the minimum requirements of the Palo Verde Valley, All American Canal and Metropolitan areas on the coastal plain. A number of meritorious California projects were thereby excluded, in consequence of the Limitation Act. The Secretary of the Interior approved the allocation and promulgated it in regulations (Appendix 8). The seven public agencies recognized therein are the seven co-defendants of the State of California in this action.

The Contracts

Contracts were made in 1930 and 1931 between the United States and the California defendants (tabulated in paragraphs 34 and 35 of their Answer to Arizona's Complaint, and printed as appendixes to that Answer), assuring the United States the revenues required by Section 4 of the

Project Act, and providing for the delivery, from storage to be provided by Hoover Dam, pursuant to Sections 5 and 6 of the Project Act, of the quantities required to make possible the beneficial consumptive use in California of not to exceed 5,362,000 acre-feet per annum. Hoover Dam and the All-American Canal were constructed by the United States. The Colorado River Aqueduct was built by the Metropolitan Water District. (See Petition of Intervention of the United States, Appendix I-A). The California defendants allege that altogether they have undertaken firm obligations to the United States or have themselves built works to utilize the water covered by their contracts, at a cost exceeding five hundred million dollars. (Answer to Arizona's Complaint, par. 1) These projects are summarized in paragraph 2 of California's Answer to Arizona's Complaint, and in Exhibits A, B, and C to that Answer. It is through these projects that the seven co-defendants, signatories to the Seven Party Agreement, are served.

The United States subsequently entered into contracts in 1942 and 1944 with Nevada (Appendix VIA, VIB, to the Petition of Intervention of the United States) for the delivery of not to exceed 300,000 acre-feet per annum, and in 1944 with Arizona (Exhibit C to Arizona's Bill of Complaint) for the delivery of the quantities required to make possible the beneficial consumptive use of not to exceed 2,800,000 acre-feet per annum of Colorado River System water.

8. Litigation

The equilibrium between the present parties and the four absent States—established in 1922 by signature of the seven-state compact, destroyed by Arizona's rejection of that compact in 1923, reestablished in 1929 by the Six-State Compact and the California Limitation Act—wavered again in 1930. Arizona was no better satisfied with the new compact than with the old, and brought three successive actions in this Court to upset it, in 1930, 1934, and 1935. In all of them she joined all of the other six States as defendants.

On October 13, 1930, Arizona instituted an action (*Arizona* v. *California, et al.*, 283 U.S. 423 (1931)), to enjoin the construction of the Hoover Dam and All-American Canal, to declare the Boulder Canyon Project Act unconstitutional, and to invalidate the Colorado River Compact. On motion of the defendants the bill of complaint was dismissed.

On February 14, 1934, Arizona moved for leave to file a bill to perpetuate the testimony of the negotiators of the Colorado River Compact. (*Arizona* v. *California, et al.*, 292 U.S. 341 (1934).) The Court denied the motion for leave to file.

In October, 1935, Arizona filed a motion for leave to file a Bill of Complaint against the States parties to the Six-State Colorado River Compact praying an equitable apportionment, which motion was denied. (*Arizona* v. *California, et al.*, 298 U.S. 558 (1936).)

The present action, consequently, is the fourth in which the Court has been asked by Arizona to pass upon the meaning of the Colorado River Compact and the Boulder Canyon Project Act. It is the first in which Arizona has seen fit not to join the States other than California.

9. Arizona's Ratification of the Seven-State Compact: 1944

Fifteen years after enactment of the Project Act and the California Limitation Act, on February 24, 1944, the Legislature of Arizona enacted a statute entitled "An Act ratifying the Colorado River Compact; and declaring an emergency." (Sess. L. Ariz. 1944, pp. 427-428.)

That legislation was accompanied and followed by assertions by Arizona of interpretations of the Colorado River Compact, reversing those which she had stated to this Court in the preceding cases. It is these new interpretations that she seeks to enforce in this suit.

In brief, they have the effect of transforming Article III(a) of the Colorado River Compact from an apportionment of the uses of the waters of the entire Colorado River

System to an apportionment of the virgin flow of the main stream only. This would be accomplished primarily by (1) excluding the uses on the Gila River System from the operation of Article III(a) and physically identifying them as an apportionment of the waters specified in Article III(b);[1] (2) identifying the uses apportioned to the Lower Basin by Article III(a) with the waters delivered under Article III(d) at Lee Ferry by the States of the Upper Division, and (3) reducing the debit for Arizona's uses by more than 1,000,000 acre-feet through the technique of measuring the consumptive uses, particularly on the Gila, not at the places where the water is consumed, but by the estimated depletion which such uses would cause in the virgin flow of the main stream.[1] There are a number of other important issues, but Arizona's case insofar as the Upper Basin States are concerned, is essentially based upon this conversion of the Colorado River Compact from a System-wide agreement to a main-stream agreement, coupled with a denial by Arizona of the right of any State to acquire appropriative rights in unapportioned water, except as the result of a new compact, to be made after October 1, 1963; that is to say, with Arizona's consent. (The decree Arizona seeks here would presumably control the negotiators of that compact; complaint, prayer, par. 4, p. 30)

10. The Mexican Water Treaty

On February 3, 1944 the United States executed a treaty with Mexico relating to the waters of the Rio Grande, Colorado, and Tijuana Rivers. On April 18, 1945, the Senate of the United States consented thereto, with reservations, and the same was ratified, effective as of November 8, 1945 (Treaty Series 994; Appendix 29 to California's Answer). The performance of this treaty, as to the Colo-

[1] Compare with the contemporary interpretation of the Colorado River Compact asserted by Arizona in *Arizona* v. *California, et al.*, 283 U.S. 423 (1931); Appendix 28 to California's Answer to the present case.

rado River System, will require the guaranteed delivery, "from any and all sources," of 1,500,000 acre-feet of water per annum at the Mexican boundary, subject to reduction in the event of "extraordinary drought or serious accident to the irrigation system in the United States", in the "same proportion as consumptive uses in the United States are reduced." (Art. 10) The treaty (Art. 1(j)) defined "consumptive use" in terms consistent with the Project Act (Sec. 4(a)).

11. Upper Colorado River Basin Compact

By the Act of April 6, 1949, (63 Stat. 31) the Congress granted its consent to a compact (Appendix 30) among Arizona, Colorado, New Mexico, Utah and Wyoming apportioning the water available to the Upper Basin under the Colorado River Compact, defined as the compact proclaimed effective by the President June 25, 1929. The legislative report accompanying that legislation stipulates that the United States, by giving such consent, does not thereby commit itself to any interpretation therein expressed or implied with respect to the Colorado River Compact (H. Rep. 270, on HR 2325, 81st Cong., 1st Sess.)

12. Issues in the Present Case

The issues in the present case, as California sees them, are stated in a "Summary of the Controversy", which is annexed as Exhibit A to the present motion.

The issues are serious. If Arizona's prayers were granted, California's rights would be reduced to the beneficial consumptive use of 3,800,000 acre-feet per annum, measured by consumption at place of use, or 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream" (present Motion, Exhibit A, p. 8). This is a great deal less than the rights which California owned and could supply from natural flow prior to the construction of Hoover Dam.

The respects in which these issues involve the absent States and necessitate their presence in this action are stated in the following argument.

SUMMARY OF ARGUMENT

The presence in this case of the four absent parties to the Colorado River Compact is necessary to an effective conclusion of the Colorado River controversy.

No effective decree determining the rights to the use of water in the Lower Basin can be made unless it be first ascertained what quantities are legally available to the Lower Basin. This requires a determination of the obligations of the States of the Upper Division to deliver water at Lee Ferry, as well as their rights to use water as areas within the Upper Basin, since the waters upon which the decree will operate in the Lower Basin have, as their principal source, the waters arriving at Lee Ferry.

The same language of the Colorado River Compact which controls rights and obligations in the Lower Basin controls those in the Upper Basin, and the Upper Basin States are consequently affected by a decree construing that disputed language.

New Mexico and Utah have a dual interest, on the one hand as States of the Upper Division and Upper Basin, and on the other hand as States entitled to a portion, as yet undetermined, of the waters available to the Lower Basin as a whole. An effective division of the waters available *en bloc* to five States cannot be made in the absence of two of them.

Arizona claims rights as a third-party beneficiary of the Statutory Compact between the United States and California evidenced by the Boulder Canyon Project Act and the California Limitation Act. Colorado, Nevada, New Mexico, Utah and Wyoming are co-beneficiaries. This Statutory Compact came into existence only as an accompaniment, required by Congress, to a Six-State Compact, in consequence of Arizona's refusal to ratify a Seven-State

Compact. The six states ratified the Compact (1925-1929) under certain well understood interpretations. Arizona purported to ratify the Seven-State Compact fifteen years thereafter, upon new interpretations. The six parties to the Six-State Compact are all necessary parties to a determination of whether their agreement has thus been supplanted by a Seven-State agreement, and, if so, what its interpretation shall be, and whether the Statutory Compact between the United States and California remains in force. If it does remain in force, all of the co-beneficiaries are necessary parties to a decree construing their rights thereunder.

The United States asserts claims to the waters of the Colorado River System which are independent of, and adverse to, not only the rights of the present parties, but of all of the States of the Colorado River Basin. Most prominent of these is a large claim to the use of water made on behalf of Indians. All of the parties to the Colorado River Compact are necessary parties to a determination of whether this Indian claim and other federal claims to the beneficial consumptive use of water are outside of the Colorado River Compact and superior to the rights governed by that Compact, or whether the federal uses are chargeable to the Basin, and to the State, in which they occur, and a determination of the effect of these claims on the rights of the States to which they are adverse.

ARGUMENT

I

ALL ABSENT PARTIES MUST BE JOINED WHERE THEIR PRESENCE IS NECESSARY FOR A FULL AND EFFECTIVE SETTLEMENT OF THE CONTROVERSY.

A. The Rules of Court and the Federal Rules of Civil Procedure.

Under Rule 9 of the new Revised Rules of the Supreme Court, effective July 1, 1954, the form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and "in other respects those rules, where their application is ap-

propriate, may be taken as a guide to procedure in original actions in this Court."

On July 15, 1954, the California Defendants filed a motion to join, as parties to the present controversy, the States of Colorado, New Mexico, Utah and Wyoming, pursuant to the procedure set forth in Rule 21 of the Federal Rules of Civil Procedure, which provides:

> "*Misjoinder and nonjoinder of parties.*— . . . Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just . . ."

The requirements for compulsory joinder of parties under the Federal Rules of Civil Procedure are stated in Rule 19, which provides:

> "*Necessary joinder of parties.*—(a) *Necessary joinder.* Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.
>
> "(b) *Effect of failure to join.* When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it; but the judgment rendered therein does not affect the rights or liabilities of absent persons."

Rule 19 has been construed merely to codify the existing federal law of necessary and/or indispensable parties under federal practice prior to the adoption of the Federal Rules of Civil Procedure. *Metropolis Theatre Co.* v. *Barkhausen*, 170 F. 2d 481, 485 (7th Cir. 1948), *cert. denied*, 336 U. S. 945 (1949); *Young* v. *Garrett*, 149 F. 2d 223, 228 (8th Cir. 1945); *United States* v. *Washington Institute of Technology*, 138 F. 2d 25, 26 (3d Cir. 1943); *Cather* v. *Ocean Accident & Guaranty Corp.*, 94 F. Supp. 511, 514 (D. Neb. 1950); *Field* v. *True Comics*, 89 F. Supp. 611, 613 (S.D.N.Y. 1950); 3 MOORE, FEDERAL PRACTICE, Par. 19.05 (2d ed. 1948).

This court in cases of original jurisdiction under Article 3, Section 2, Clause 2 of the Constitution has framed its proceedings on the question of parties in accordance with a developing body of federal precedents and held these precedents binding even where their application defeated the original jurisdiction. *California* v. *Southern Pacific Co.*, 157 U. S. 229 (1895); *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199 (1902); *New Mexico* v. *Lane*, 243 U. S. 52 (1917).

B. The test of "necessary" parties.

Cited by the court in *California* v. *Southern Pacific Co.*, *supra*, as authority for cases of original jurisdiction, was the leading case of *Shields* v. *Barrow*, 17 How. 130 (U. S. 1855). It defined "necessary parties" as:

> "Persons having an interest in the controversy, and who ought to be made parties, in order that the Court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties . . . ." (p. 139)

This rule as to necessary parties has been followed in subsequent decisions by the court, *Railroad Company* v. *Orr*, 18 Wall. 471 (U. S. 1873), *McArthur* v. *Scott*, 113 U. S.

340 (1885), *Gregory* v. *Stetson*, 133 U. S. 579 (1890), *Commonwealth Trust of Pittsburgh* v. *Smith*, 266 U. S. 152 (1924), and appears to have been incorporated in the definition of necessary parties found in subdivision (b) of Rule 19 of the Federal Rules of Civil Procedure as those:

> "who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties . . ."

Where absent parties are found to be necessary, they must be joined to the suit when they are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it. Federal Rules of Civil Procedure, Rule 19(b); See *Williams* v. *Bankhead*, 19 Wall. 563, (U. S. 1874); *Barney* v. *Baltimore*, 6 Wall. 280 (U. S. 1868).

C. The further test of "indispensability".

If jurisdiction over those qualifying as necessary parties cannot be obtained, or if the joinder of such parties would destroy the court's jurisdiction over the parties before it, the court must then make the further determination of whether they are so "indispensable" as to require dismissal of the suit. The *Shields* case defined an indispensable party as:

> "Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." (p. 139)

This rule as to indispensable parties has been uniformly followed as the guiding test. *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U. S. 77 (1920); *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199 (1902); *Barney* v. *Baltimore*, 6 Wall. 280 (U. S. 1868); *Northern Indiana*

R.R. v. *Michigan Central R.R.*, 15 How. 233 (U. S. 1854); *Mallow* v. *Hinde*, 12 Wheat. 193 (U. S. 1827). Where absent parties are found to be indispensable this Court has uniformly held that no adjudication can be made and the action must be dismissed. *Shields* v. *Barrow*, 17 How. 130 (U. S. 1855); *California* v. *Southern Pacific Co.*, 157 U. S. 229 (1895); *Arizona* v. *California*, 298 U. S. 558 (1936).

D. Since the absent parties are within the court's jurisdiction, the question is whether they are "necessary", not whether they are "indispensable".

The four absent States of Colorado, New Mexico, Utah and Wyoming will be affected so directly and materially by a resolution of the issues raised in the pleadings among the present parties to the controversy, for the reasons hereafter shown, that they would qualify as indispensable parties if such a determination were required. However, since the four States are subject to the jurisdiction of this court both as to service of process and venue, and their joinder will not deprive the court of its original jurisdiction over the parties, a determination of indispensability is not required under the federal law of compulsory joinder. The absent States must be joined as long as they qualify as "necessary" parties. Accordingly, the only question that need be decided on this motion is whether the States of Colorado, New Mexico, Utah and Wyoming are necessary parties to this litigation.

E. The absent States are necessary parties.

Colorado, New Mexico, Utah and Wyoming must be joined as necessary parties if "complete relief" is to be accorded between those presently parties to the controversy. They must also be joined as necessary parties because their rights are at issue in this suit and should not be determined in their absence. The issues which materially and directly affect the absent States so as to require

their joinder are identified and summarized in the following pages.

II

THE FOUR STATES OF COLORADO, NEW MEXICO, UTAH AND WYOMING ARE NECESSARY PARTIES TO THIS ACTION BECAUSE THEY ARE PARTIES TO THE COLORADO RIVER COMPACT; THE MEANING AND EFFECT OF WHICH ARE IN CONTROVERSY IN THIS CASE, AND NO DECREE CONSTRUING THAT AGREEMENT CAN BE FULLY EFFECTIVE WHICH DOES NOT DETERMINE THEIR RIGHTS AND OBLIGATIONS AS WELL AS THOSE OF THE PRESENT PARTIES.

A. Both the rights of the absent States, as areas in part within the Upper Basin, and the obligations of those States, as the four "States of the Upper Division," are controlled by the language of the Colorado River Compact which determines the rights and obligations of the present parties.

The obligations of the States of the Upper Division are stated in Articles III(c), III(d) and III(e). The greater portion of the waters in controversy in the Lower Basin reach that Basin through the operation of those Articles.

The rights of the Upper Basin, like those of the Lower Basin, are stated in Articles III(a), III(e), III(f) and III(g). The quantities reaching the Lower Basin are directly affected by the quantities which the Upper Basin may have a right to use.

The obligations and the rights of all the States are affected by Articles VII and VIII.

The rights and obligations of the absent States are defined in the same terms, and in some cases in the same sentence, as the rights and obligations which are in dispute among the present parties, as is developed below.

B. The States of the Upper Division are affected by the question of whether the apportionment made to the Lower Basin by Article III(a) is identified with the covenant of the States of the Upper Division in Article III(d) not to deplete the flow at Lee Ferry below a total of 75,000,000 acre-feet in each period of ten consecutive years, or whether the "rights which may now exist" to uses on the Gila River and other Lower Basin tributaries shall be charged against the Lower Basin's apportionment under Article III(a).

This question depends upon the resolution of two others:

(a) Are the uses of the waters of the Gila River System and other Lower Basin tributaries chargeable at all to the apportionment made by Article III(a) to the Lower Basin?

(b) If uses on the tributaries are chargeable under Article III(a), what is their magnitude?

These two questions were primarily responsible for Arizona's refusal to ratify the Compact for twenty-two years, and they go to the heart of the present controversy.

The contending views are as follows:

California asserts that the waters of the Gila River System are part of the Colorado River System as defined by Article II(a) and of the Lower Basin as defined by Article II(g), (California's Answer to Arizona's Complaint, par. 7, p. 9); that uses under "rights which may now exist" to the waters of the Gila River System are chargeable under Article III(a) of the Compact to the Lower Basin and to Arizona, (*id.*, par. 8, pp. 11, 12); and that such uses amount to not less than 2,000,000 acre-feet per annum (*id.*, par. 8, p. 12).

Arizona asserts that the apportionment made by Article III(a) to the Lower Basin is of the use of waters present in the main stream and measured at Lee Ferry (Reply to California's Answer, par. 8, p. 16), and "that the 75,000,000 acre-feet specified in Article III(d) bears a direct quantitative relationship to the 7,500,000 acre-feet per year apportioned to the Lower Basin by Article III(a)"

(Reply to California's Answer, par. 11, p. 18)[1]. She alleges that the first million acre-feet of uses on the Gila (measured by her depletion method) are chargeable under Article III(b), not III(a) (*id.*, par. 8, p. 17), and that only the excess, which she now says is 170,000 acre-feet, is chargeable under III(a). (*Id.*).

The net effect of Arizona's contentions is to read the Gila River System out of the Compact insofar as Article III(a) is concerned. (Arizona also reads the Gila out of the Colorado River System insofar as the Mexican burden is concerned: Reply to California's Answer, par. 10, p. 17.)

The effect of this issue upon the obligations of the four

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[1] Arizona's present position on this point reverses that which she presented to this Court in *Arizona* v. *California, et al.*, 283 U.S. 423 (1931), in which her counsel said (Brief of Complainant in Opposition to Motions to Dismiss the Bill of Complaint, p. 32; Appendix 28 to California's Answer to Arizona's Complaint in the instant suit, pp. 397, 398):

"The provision in paragraph (d) of Article III that the Upper Basin States will not cause the flow of the river to be depleted below 75,000,000 acre-feet over ten-year periods, has, as the Colorado brief, page 41, correctly states, no bearing on the amount of the apportionment to the Lower Basin. This 75,000,000 acre-feet is not apportioned to the Lower Basin. It may not be appropriated in the Lower Basin. Only so much of it may be appropriated as together with existing and future appropriations of water in or from tributaries entering the river below Lee Ferry will total 7,500,000 acre-feet per year. The 75,000,000 acre-feet includes all surplus waters which under paragraph (c) must first bear any Mexican burden, which may not be appropriated, and which are subject to apportionment after 1963. It is fundamental to an understanding of the Compact that the annual beneficial consumptive use in perpetuity of 7,500,000 acre-feet of water apportioned by it to the Lower Basin includes all beneficial consumptive use in perpetuity which may be made from the whole river system, and is not merely an apportionment of such uses in main stream water flowing at Lee Ferry. The agreement not to deplete the flow at Lee Ferry below the specified amount does not mean, and cannot under the plain words of the Compact be construed to mean, that the guaranteed flow is apportioned to the Lower Basin or may be appropriated there. As to this, at least, there can be no shadow of doubt."

absent States under Articles III(c) and III(d), as States of the Upper Division, is as follows:

If the uses of Arizona on the tributaries are chargeable at all to the Lower Basin's apportionment under Article III(a), it follows that, even if they are measured under Arizona's theory at only approximately 1,000,000 acre-feet, the 75,000,000 acre-feet received by the Lower Basin in a ten-year period at Lee Ferry must include at least 10,000,000 acre-feet of waters other than those the use of which is apportioned to the Lower Basin by Article III(a), because manifestly the Lower Basin cannot claim this ten million acre-feet twice under Article III(a), once on the tributaries and a second time at Lee Ferry. The States of the Upper Division, in the calculation of their obligation under Article III(c), are thus directly affected by the question of whether or not the uses on the Gila River and other Lower Basin tributaries are accountable under Article III(a), quite aside from the question of how such uses are measured.

That being so, the States of the Upper Division are affected by the magnitude assigned to the uses on the Lower Basin tributaries. California asserts that such uses amount to at least two million acre-feet per annum on the Gila River System; Arizona says they are less than 1,200,000.[2] This represents a difference of another 8,000,000 to 10,000,000 acre-feet in 10 years in the classification of the uses of the waters arriving at Lee Ferry.

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[2] Compare this contention, also, with Arizona's assertions in *Arizona* v. *California, et al.*, 283 U.S. 423 (1931), particularly par. XIV of the bill of complaint (reprinted in Appendix 28 to California's answer, p. 389):

> "(3) Said compact defines the term 'Colorado River System' so as to include therein the Gila River and its tributaries, of which the total flow, aggregating 3,000,000 acre-feet of water annually, was appropriated and put to beneficial use prior to June 25, 1929."

The dispute over the magnitude of the uses on the Gila is part of the more general dispute as to how beneficial consumptive uses shall be measured, (II-D, *infra*).

C. The States of the Upper Division are affected by the question of whether the provision of Article VIII that "present perfected rights are unimpaired by this Compact" means unimpaired as to quality as well as quantity.

The parties' contentions are as follows:

California alleges (Answer to Arizona's Complaint, par. 15, p. 17), that the protection of this language extends to quality as well as quantity; Arizona says that the provision relates only to quantity (Reply to California's Answer, par. 15, p. 20).

Each State alleges the existence of large "present perfected rights." California alleges that, as of June 25, 1929, her rights of that category exceeded 4,950,000 acre-feet per annum, (Answer to Arizona's Complaint, par. 28, p. 29), measured by diversions less return flow. Arizona admits that California had constructed projects as of June 25, 1929 which required a "net main stream depletion of about 2,902,000 acre-feet of water per annum" (Reply to California's Answer, par. 28, p. 26). Arizona alleges that in 1922, 73,000 acres were irrigated in that State from the main stream of the Colorado River. (*Id.*, par. 4, p. 14).

That there were large "present perfected rights" to the use of main stream water in the Lower Basin is attested by Article VIII of the Compact and Section 6 of the Boulder Canyon Project Act, directing that the dam and reservoir be used, among other purposes, for the protection of such rights.

The effect of this issue upon the absent States is as follows:

It is a question of fact, to be developed at the trial, what effect the increased utilization of water in the Upper Basin will have upon the concentration of salts in the

residue reaching Lee Ferry. The present concentration equals somewhat less than one ton of salts per acre-foot of water. What the effect will be, due to increased uses of water in the Upper Basin, and whether transmountain diversions will have a greater effect on the quality at Lee Ferry than in-basin consumptive uses, are matters to be determined. How much increase in salinity the projects in the Lower Basin with "perfected rights" can stand without affecting the yield and types of crops which have been grown are other factors to be considered.

The absent States are thus affected by the questions of whether Article VIII protects "present perfected rights" with respect to quality as well as quantity, what the magnitude of such rights in the Lower Basin may be, and the effect that the covenant that such "present perfected rights shall remain unimpaired by the Colorado River Compact" may have upon the rights and obligations of the absent States.

D. The rights of the Upper Basin are affected by the controversy over the interpretation of the expression "beneficial consumptive use".

The expression "beneficial consumptive use" occurs in Articles III(a) and III(b). Its meaning affects both basins.

Four definitions of this expression have been advanced:

California says (par. 8 of Answer to Arizona's Complaint) that the meaning of this term in the Compact is the same as that defined in section 4(a) of the Boulder Canyon Project Act:

> ". . . aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River . . . ."

which, California says, is amplified in the Mexican Water Treaty Article 1(j) as follows:

> "'Consumptive use' means the use of water by evaporation, plant transpiration or other manner whereby

> the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream." (See Appendix 29.)

California says that this was the meaning of that term as used throughout the Compact (Answer to Arizona's Complaint, par. 8, p. 12.)

Arizona says (Complaint, par. XXII) that:

> ". . . beneficial consumptive use is measured in terms of main stream depletion, that is, the quantity of water which constitutes the depletion of the stream by the activities of man."

Nevada says (Petition of Intervention, par. XVIII) in substance, that the rule of "diversion less return flow" applies generally subject to an exception in favor of the "main stream depletion theory" on certain tributaries.

The four absent States of Colorado, New Mexico, Utah and Wyoming, together with Arizona, have provisionally agreed in the Upper Colorado River Basin Compact (63 Stat. 31; Appendix 30):

"ARTICLE VI

> "The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of the man-made depletion of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination."[1]

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[1] See Report of the House Committee on Public Lands, No. 270, on H.R. 2325; 81st Cong., 1st Sess. (1949), an act granting the consent of Congress to the Upper Colorado River Basin Compact (63 Stat. 31): "It is recognized that the Upper Colorado River Basin Compact is binding only upon the States which are signatory thereto and does not impair any rights of any State not signatory thereto, and that the Upper Colorado River Basin Com-

The "spread" of figures produced by these various methods is of the order of two million acre-feet per annum, as to the entire Basin, and three to five hundred thousand acre-feet as to the Upper Basin.[2]

The four absent States are affected by this issue in the calculation of their own rights to use water under Article III(a). The formula which they have provisionally adopted in Article VI of the Upper Colorado River Basin Compact does not bind the States of the Lower Basin or the United States. They are also affected by this issue in the calculation of their obligations as "States of the Upper Division" under Articles III(c) and III(d), *supra*, because these obligations are affected by the quantities of use of "surplus" waters above the quantities specified in Articles III(a) and III(b), both in the Lower Basin and the Upper Basin, which must be yielded before the added obligation of the States of the Upper Division under Article III(c) comes into force. The quantities in fact beneficially consumed, measured at the place of use, are greater than the resulting depletion of the virgin flow of the main stream. This is particularly true in the Lower Basin. The magnitude of the uses chargeable to the Lower Basin is consequently greater, if calculated in terms of actual consumption at the places of use, than if calculated in terms of resulting depletion of the virgin flow of the main stream.

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pact is subject, in all respects, to the provisions and limitations contained in the Colorado River Compact. It is further recognized that Congress, by giving its consent to the Upper Colorado River Basin Compact, does not commit the United States to any interpretation of the Colorado River Compact expressed in, or implied from, the Upper Colorado River Basin Compact, and expresses neither agreement nor disagreement with any such interpretation."

[2] As to the figures applicable to the Lower Basin, see "Summary of the Controversy": Exhibit A to the Answer of the California Defendants to the Petition of Intervention of the United States, and to the present motion. As to the figures respecting the Upper Basin, see Record, UPPER COLORADO RIVER BASIN COMPACT; Proceedings of July 8, 1948, p. 58.

We do not think that four sets of books should be kept on uses in the Colorado River Basin, one under the Colorado River compact, one under the Boulder Canyon Project Act, one under the Upper Basin compact, and one under the Treaty. We think one rule applies, and that the treaty, in Article 1, fairly states it.

There are other serious questions involved in the interpretation of the expression "beneficial consumptive use." For example, if water is stored in a reservoir and later released and used, shall the charge for that use be made in the year in which the water was stored (on the theory that the use, in the sense of "depletion" of the river's flow, took place in that year), or made in the year of release and actual consumption? The four absent States maintain the former interpretation (Hearings, House Committee on Public Lands, H.R. 2325, 81st Cong., 1st Sess., (1949), pp. 57-58, question 6(b); Appendix 31 to California's Answer, Vol. II). California asserts the latter construction. The difference is important, because water is added to storage in plentiful years and is withdrawn in years of short supply, and the identification of the "use" with the one year or the other seriously affects the determination of the quantities of "surplus" waters used.

The term "beneficial consumptive use," applied by the Compact in common to both Basins, must be given a uniform interpretation and application in both.

E. The Upper Basin is affected by the question of whether beneficial consumptive uses of "salvaged water", i.e., water salvaged by the activities of man, which would be lost in a state of nature, shall be charged under the Colorado River Compact.

This question is not necessarily controlled by the question of whether consumptive use shall be calculated in terms of actual use at place of use or calculated in terms of main stream depletion of virgin flow. The question here is whether any charge at all shall be made, under either theory, for the use of water salvaged by man which

would have been lost to the Colorado River System in a state of nature. Arizona cites, as an example, the Gila River, which she says was a "losing stream" in a state of nature. (Complaint, par. XXII, p. 26.) Other examples occur on the main stream, on which there were large evaporation losses from such areas as the Palo Verde Valley, Parker Valley and Yuma Valley in a state of nature, but where such water is now conserved and used; so also with respect to the flood waters on the tributaries and the main stream which escaped in a state of nature but were salvaged by the construction of storage dams, such as Roosevelt Dam on the Gila System and Hoover Dam on the main stream.

The present parties have advanced three contentions; the absent States may advance others.

Arizona contends that "water salvaged by man is not chargeable as a beneficial consumptive use" (Complaint, par. XXII, p. 26), although she charges California with the use of flood waters salvaged by storage behind Hoover Dam, which otherwise wasted to the Gulf of California.

California contends that "no beneficial consumptive uses at places of use are excepted or exempt from said method of measurement, whether of natural flow or of water salvaged by storage or otherwise in any part of the basin." (Answer to Arizona's Complaint, par. 8, p. 12).

Nevada contends that the use of waters salvaged on certain tributaries is not chargeable (Petition of Intervention of Nevada, par. XVIII, p. 20), either under the depletion theory (p. 20) or the diversion-less-return-flow theory.

This issue involves the absent States in two ways:

As this question involves the interpretation of "beneficial consumptive use," an expression common to both basins, the determination of the accounting for the use of waters salvaged by man must apply uniformly to both basins.

The question of whether the use of salvaged water shall be charged under the Compact in either basin, affects the total of the uses chargeable in the entire Colorado River

Basin under paragraphs (a) and (b) of Article III, and therefore affects the amount of "surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b)" of Article III, available to support the Mexican Treaty burden before the States of the Upper Division are required to increase their deliveries under Article III (c) at Lee Ferry.

F. The Upper Basin is affected by the question of whether the Compact term "per annum" means "each year", or an average over some unstated period of years.

Both Articles III(a) and III(b) refer to quantities in terms of uses "per annum." The problem is whether the apportionment made by Article III(a) to the Upper Basin reserves to that Basin, against appropriations in the Lower Basin, the right to a maximum of 7,500,000 acre-feet in any given year, or a right to an annual average of that quantity over some long period of time. The latter is more advantageous to the Upper Basin and disadvantageous to the Lower. Very large amounts of water are affected by this question.

The contentions of the States are as follows:

The four absent States have asserted a right to use, as water apportioned by Article III(a), aggregate quantities which, averaged over a 32-year period, would equal 7,500,000 acre-feet per annum, notwithstanding that the annual uses which make up this 32-year total would exceed 7,500,000 acre-feet per annum in 17 of the 32 years, and that such excess use would amount to as much as 2 million acre-feet in individual years.[1]

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[1](i) The right to calculate the apportionment on an average basis was asserted by the negotiators of the Upper Colorado River Basin Compact, without translating their assertion into figures, in the hearings of the House Committee on Public Lands on H.R. 2325 *et al.*, 81st Cong., 1st Sess., (1949), p. 57. (Answer to question No. 3.)

(ii) The result of this contention, in figures, appears in "Colorado River Storage Project and Participating Projects, Upper

California's contention is that the quantities specified in Articles III(a) and III(b) relate to the aggregate annual uses in each calendar year, considering each year separately. The result is that if the Upper Basin uses more than 7,500,000 acre-feet in a given year, it is using water above that apportioned to it by Article III(a), and if the Lower Basin uses more than 8,500,000 acre-feet in any given year it is using water in excess of that apportioned by Article III(a) and surplus to that permitted by Article III(b). The right to use that excess or surplus is not founded on the apportionment made by Article III(a), but upon appropriation of such excess or surplus waters (using the word "appropriation" here, as elsewhere in this brief, to include the acquisition of rights by contract with the United States to the use of waters stored by the United States). California construes "per annum" like "per hour" in a speed limit, and denies the right of either Basin to use, as "apportioned" in perpetuity, a quantity in excess of 7,500,000 acre-feet in a given year merely because that Basin, in some other year, used less than that quantity.[2]

Colorado River Basin"; U.S. Bureau of Reclamation, December 1950; H. Doc. 364, 83d Cong., 2d Sess., (1954), p. 152: (Table captioned "Determination of active storage requirement to permit full utilization of apportioned consumptive use"). Column 2 of that Table; captioned "Ultimate use of upper basin apportionment", shows uses by proposed Upper Basin projects of more than 7,500,000 acre-feet in each of the 17 years corresponding to the historical years 1914, 1916, 1917, 1918, 1920, 1921, 1922, 1923, 1926, 1927, 1928, 1929, 1930, 1932, 1938, 1941, and 1942, ranging from an excess of 90,000 acre-feet in a year like 1930 to an excess of 2,030,000 acre-feet in a year like 1917. The aggregate use in these 17 years, in excess of 7,500,000 acre-feet per annum, is 15,680,000 acre-feet, and the average excess for each of the 17 years is 920,000 acre-feet. The average excess for the whole 32-year period is 490,000 acre-feet per annum.

[2] The expression used in Section 4(a) of the Boulder Canyon Project Act is "aggregate annual consumptive use". The water delivery contracts made under that Act refer to delivery of specified quantities "each year". This is true with respect to the Government's water delivery contracts in California (Ap-

Arizona apparently agrees with this in principle, but contends that, as a parctical matter, measurement of uses must be "averaged," and that the issue has not yet arisen. (Reply to California's Answer, par. 8, p. 17.)

If California is correct, the absent States are relying, in the planning of their projects, on a misinterpretation of the Compact which, with respect to this point alone, would unlawfully add several hundred thousand acre-feet per annum to their supply, and correspondingly diminish the supply to which the Lower Basin is lawfully entitled.

The expression "per annum" must be given a uniform interpretation in both of the Basins to which the one expression refers.

G. The Upper Basin is affected by the question of whether, and how, rights may be acquired in either Basin to the use of waters surplus to those specified in Articles III(a) and III(b) of the Compact.

Two widely conflicting views on this question have been stated.

California asserts that pursuant to its Statutory Compact with the United States rights may be presently acquired in such surplus waters by appropriation, including contracts with the United States where such waters have been stored by the United States, and that this right likewise exists under the Compact and applies in the Upper Basin States, subject to the priority of earlier appropriations and earlier contracts in the Lower Basin. (Answer to Arizona's Complaint, par. 27, p. 28; par. 13, p. 16.)

Arizona (Complaint, par. XI, p. 17; Prayer, par. 4, p. 30; Reply to California's Answer, par. 13, pp. 18-19) as-

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pendixes 11, 13, 16, 19, 21, 23 to the Answer of the California Defendants to Arizona's Bill of Complaint), Arizona (Exhibit C to Arizona's Bill of Complaint), and Nevada (Appendixes VI(A), VI(B) to Petition of Intervention of the United States). The guaranteed delivery to Mexico is 1,500,000 acre-feet "annually", "a year". (Mexican Water Treaty, Art. 10; Appendix 29, Vol. II).

serts that no rights may be acquired in such surplus waters except as the result of a new compact to be made after October 1, 1963.

The issue affects the absent States in several ways:

If the Compact should be held, as California contends, to apportion to the Upper Basin the beneficial consumptive use of only 7,500,000 acre-feet in each calendar year, and not a long-term average of that amount, the right of the Upper Basin to the beneficial consumptive use of more than 7,500,000 acre-feet in any one calendar year is dependent upon the establishment of a right thereto by appropriation and use, not by apportionment under Article III(a). But Arizona (Complaint, par. XI; Reply to California's Answer, par. 57) and Nevada (Petition of Intervention, par. XX) deny the existence of any present right to acquire rights in unapportioned waters. A question of fact exists as to whether all such surplus waters which the Upper Basin might attempt to use have already been appropriated or contracted for in the Lower Basin or dedicated to Mexico by treaty. (See California's Answer to Arizona's Complaint, par. 46, p. 52; par. 47, p. 53; Answer to Nevada's Petition of Intervention, par. 5, p. 5; Answer to Petition of Intervention of the United States, par. 15-17, pp. 29-31.)

California contends that the Compact was intended when written in 1922 to insulate the Upper Basin against the law of appropriation, applied regardless of State lines (*Wyoming* v. *Colorado*, 259 U. S. 419 (1922)) only to the extent of a permanent right to make beneficial consumptive use of 7,500,000 acre-feet per annum. All other waters must come down the river, unless appropriated for beneficial consumptive use in the Upper Basin in competition with the Lower, for they are either subject to the apportionment made to the Lower Basin by Article III(a), or to the Lower Basin's right to increase its use by 1,000,000 acre-feet per annum, or to the dedication of 1,500,000 acre-feet a year made by the Mexican Water Treaty to Mexico.

or to appropriations long since made in the Lower Basin of all other waters in excess of those apportioned by Article III(a).

H. The Upper Basin is affected by the question of whether the increase of use permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as against the Upper Basin, or whether the Lower Basin's right to that million acre-feet, as against the Upper Basin, is dependent upon appropriation and use.

The contentions advanced to date are as follows:

California alleges that the language of Article III(b) does not constitute an apportionment to the Lower Basin, which remains good in perpetuity against the Upper Basin regardless of non-use, as does the apportionment made in Article III(a), but that the "right to increase its use" given the Lower Basin becomes effective only to the extent that appropriations, including contracts with the United States for the use of water stored by the United States, are made; that only upon making such appropriations, and not until then, does the right become vested in users in the Lower Basin (Answer to Arizona's Complaint, par. 9, p. 13); and that the first million acre-feet so committed in excess of 7,500,000 in any year, throughout the Lower Basin, is covered by this permission. It follows that if such rights have not been exercised by the time the Upper Basin becomes entitled under Articles III(f) and III(g) to demand a further apportionment, the uncommitted portion of this million acre-feet becomes available for further apportionment upon demand of the Upper Basin, as a part of the waters unapportioned by the Colorado River Compact (Cf. Sec. 4(a) of the Boulder Canyon Project Act).

Arizona now alleges that the use of the acre-feet referred to in Article III(b) is apportioned by the Compact in perpetuity to the Lower Basin, but is identified with the waters of the Gila River, which are physically avail-

able only to Arizona and New Mexico[1] (Reply to California's Answer, par. 9, p. 17).

Nevada asserts that increases of use throughout the Lower Basin are accountable under Article III(b) and are available to all five States in that Basin upon an agreement among such States (Petition of Intervention, par. VIII, p. 13), but that Article III(b) constitutes an apportionment by the Compact to the Lower Basin (*id.*, par. X, pp. 14-15).

The issue affects the Upper Basin with respect to the quantities of water which will be available for reapportionment under Article III(f). If the uses referred to in Article III(b) are "apportioned," that million acre-feet will not be subject to reapportionment in favor of the Upper Basin, even if unused. But if the Lower Basin's right thereto is dependent upon appropriation, not apportionment, the portion unappropriated will be subject to reapportionment, like other surplus waters unapportioned by the Compact.

I. The absent States are affected by the issue of the accounting for reservoir evaporation losses.

There are a number of contentions on this issue.

Arizona contends (Reply to California's Answer, p. 50):

> "Losses of water in and from reservoirs located in the Lower Basin on the main stream of the Colorado River shall be charged against the apportionment to Arizona and California respectively in the same proportion as the consumptive use of water delivered from storage in such Reservoirs in the State against which the charge is made currently bears to the total consumptive use in the Lower Basin of water delivered from storage in such Reservoir."

This would exclude Nevada from any charge for reservoir losses on Lake Mead.

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[1] Compare with Arizona's contentions in *Arizona* v. *California, et al.*, 283 U.S. 423 (1931); Appendix 28 to California's Answer, p. 398, 399.

California contends that the limitation imposed by the Statutory Compact is stated in quantities "for use in California," and

> "Said Statutory Compact does not provide for the reduction of said quantities in consequence of reservoir, evaporation or other losses occurring prior to delivery of said waters at the points of diversion in California." (Answer to Arizona's Bill of Complaint, par. 27(f), pp. 27-28.)

Nevada contends that

> "evaporation losses of water from storage reservoirs on the main stream of the Colorado River in the Lower Basin are first chargeable out of excess or surplus water and that such evaporation losses are not chargeable against Article III(a) or III(b) waters unless and until all such available excess or surplus water is exhausted in any given year." (Petition of Intervention, par. XVIII, p. 21.)

The four absent States apparently contend that all reservoir losses in the Upper Basin, whether on the main stream or tributaries, are chargeable against the uses apportioned by Article III(a) of the Colorado River Compact. (Upper Colorado River Basin Compact, Art. V; Appendix 30.)

It is not known what position the United States will take as to the accounting for reservoir evaporation losses attributable to federal claims to water, *e.g.*, for the service of Indian rights, performance of the Mexican Water Treaty, navigation, flood control, power generation, etc.

The quantities of reservoir evaporation losses involved are of the order of two million acre-feet per annum, somewhat more than one-half being in the Lower Basin. As this question arises in connection with the definition of "beneficial consumptive use" in Article III(a) and III(b), and affects obligations under Articles III(c) and III(d), it is an issue common to both Basins.

J. The Upper Basin is affected by the question of whether rights of Indians, and uses under these and other federal claims of rights, are chargeable against the apportionments made by the Colorado River Compact, or are excluded therefrom by Article VII.

This question, which concerns the absent States as much as the States now parties to this suit, is discussed, *infra*, in connection with the necessity of the presence of these States as parties to the adjudication of the federal claims to the waters of the Colorado River System.

K. Language in the Colorado River Compact applicable to both Basins must be given the same interpretation as to both, and the decree in this case interpreting such language as to the Lower Basin must, to be effective, operate throughout the Upper Basin as well as the Lower. This requires that the four absent parties to the Compact be made parties to this action.

The Colorado River Compact, like other interstate compacts, is a contract between states. *Green* v. *Biddle*, 8 Wheat. 1 (U. S. 1823). Parties to the compact are bound by joint obligations, and have rights as joint obligees.

The settlement of the controversy between the present parties to the suit, Arizona, California, Nevada and the United States, can only be made by a decree determining provisions of the Colorado River Compact definitive of Lower Basin rights and obligations which by the same language must conversely be definitive of rights in the Upper Basin and obligations of the Upper Division States. If the Upper Basin States of Colorado, New Mexico, Utah and Wyoming, as parties to the Colorado River Compact, are not made parties to the suit, no settlement of Lower Basin rights can be final and effective. Under the applicable law they must be joined.

(1) Signatories to the Compact must be joined.

The absent States are necessary parties merely as signatories to the Colorado River Compact now in controversy.

Following the general tests for necessary or indispen-

able parties set forth in the leading case of *Shields* v. *Barrow*, 17 How. 130 (U. S. 1855) the courts have given them specific application to situations where contract rights of absent parties are involved in the controversy before the court. The *Shields* case itself determined that in a suit to rescind a contract, all parties to the contract are indispensable to the suit, as the rights of an absent party to the instrument could not be adjudicated in his absence.

Similarly, a general rule that all parties to the contract in issue must be joined as necessary or indispensable parties has been followed where the question was not one of the very existence of the contract, as in the *Shields* rescission case, but one of interpretation of respective rights and obligations under the contract in issue. *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U. S. 77 (1920); *Gregory* v. *Stetson*, 133 U. S. 579 (1890); Cf. *Mallow* v. *Hinde*, 12 Wheat. 193 (U. S. 1827).

In *National Licorice Co.* v. *N.L.R.B.*, 309 U. S. 350 (1940) the court stated the rule and its reason:

> "Ordinarily where the rights involved in litigation arise upon a contract, courts refuse to adjudicate the rights of some of the parties to the contract if the others are not before it. . . . Such a judgment or decree would be futile if rendered, since the contract rights asserted by those present in the litigation could neither be defined, aided nor enforced by a decree which did not bind those not present." (p. 363).

Accord see *Gauss* v. *Kirk*, 198 F. 2d 83, 84 (D. C. Cir. 1952).

(2) Parties having interdependent rights and obligations under the Compact must be joined.

The States of Colorado, New Mexico, Utah and Wyoming are more than mere parties to a contract in dispute, as their rights under the Colorado River Compact are jointly stated with the rights of the Lower Basin States and controlled by the same language so that any determination of Lower Basin rights pursuant to the Compact would con-

versely determine rights in the Upper Basin. Moreover, the obligations of the absent States as States of the Upper Division, are so interdependent with the rights of the Lower Basin States that the interests of one group cannot be defined and adjudicated without affecting the interests of the other.

In *Commonwealth Trust of Pittsburgh* v. *Smith*, 266 U. S. 152 (1924) the State of Idaho entered into a contract with an irrigation company whereby the company was to build irrigation works and provide the requisite water supply to settlers, selling to each settler water rights all on the same plane of equal priority, not in excess of the available water supply. The company in turn entered into contract with settlers of reclaimed land to sell water rights to a common water supply. All contracts between the company and the settlers were of the same tenor, but each was separate and distinct. In an action by the holder of the company contracts against only two of the settlers for nonpayment under their contracts, the Court held that all were necessary parties, saying:

> "The bill sets forth the controversy respecting the water supply and does so for the purpose of having it determined. The controversy is not peculiar to the contracts sued on but reaches and affects all that are outstanding. The contracts, while several in form, are interdependent in substance and operation. All are effectively tied together by the contract between the State and the company in virtue of which they were made, and by what they purport to do, which is to entitle their holders to participate on equal terms in the use of a common supply of water and to invest them with proportionate interests in the works by which the water is collected and conducted to the places of use." (p. 159).

Then the lower court judge was quoted with approval as follows:

> "In a very substantial sense all the settlers are parties to one general contract, in the subject matter of which

all are interested and by virtue of which all have rights so interdependent, whether they be regarded as joint or several, that the interest of one cannot be defined and adjudicated without affecting the interests of the other."

The courts have uniformly required the joinder of absent persons subject to the courts' jurisdiction having a community of interest with the litigation at bar. *Independent Wireless Telegraph Co.* v. *Radio Corp. of America*, 269 U. S. 459 (1926); *Metropolis Theatre Co.* v. *Barkhausen*, 170 F. 2d 481 (7th Cir. 1948), *cert. denied*, 336 U. S. 945 (1949); *Franz* v. *Buder*, 11 F. 2d 854 (8th Cir. 1926), *cert. denied* 273 U. S. 756 (1927); *West* v. *Randall*, 29 Fed. Cas. 718, No. 17,424. (C.C.R.I. 1820).

(3) All parties having interests in Colorado River System waters must be joined.

The subject matter of the controversy—*i.e.*, the use of the water of the Colorado River System—would make all of the States of the Colorado River Basin necessary parties to the suit, even if the rights asserted bore no relationship to a Compact in which the rights of the States are interdependently stated. Arizona recognized this fact in her previous suits in this Court in which she named all of the other Colorado River Basin States as defendants. *Arizona* v. *California, Colorado, Nevada, New Mexico, Utah, Wyoming, and Wilbur, Secretary of the Interior*, 283 U. S. 423 (1931); *Arizona* v. *California, Colorado, Nevada, New Mexico, Utah, Wyoming and Ickes, Secretary of the Interior*, 292 U. S. 341 (1934); *Arizona* v. *California, Colorado, Nevada, New Mexico, Utah and Wyoming*, 298 U. S. 558 (1936). The legal principles are well recognized.

In *California* v. *Southern Pacific Co.*, 157 U. S. 229 (1895) the Court held absent parties to be indispensable (and consequently ousted the court of original jurisdiction) even though they were involved in real estate transactions distinctly separate from the litigated transactions. How-

ever, because the validity of all the transactions turned on common questions of law, the Court felt that any decree issued would be hollow in the absence of all the parties to the other transactions. After conceding that the decree technically would not be binding on the absent parties as *res judicata*, the Court said:

> "... it is impossible to ignore the inquiry whether the interests of parties not before the court would be so affected and the controversy so left open to future litigation as would be inconsistent with equity and good conscience." (p. 255).

Similarly in *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199 (1902) the Court held that in order to judge the rights of the Northern Securities Company to exercise control over two parallel and competing railroads in Minnesota, the rights of the two absent railroads were necessarily involved, making them indispensable parties. In the present suit an adjudication of rights of the Lower Basin States to Colorado River System water would necessarily control the remaining rights of the Upper Basin States to System waters.

In *Railroad Company* v. *Orr*, 18 *Wall.* 471 (U. S. 1873) certain bondholders brought suit for an accounting and foreclosure of the mortgaged property. All of the bondholders named in the indenture agreement were not joined as parties. The court noted from the bill that the mortgaged property was probably inadequate to pay all of the bond claims purporting to be secured by it, and held the absent bondholders necessary parties to the suit, stating:

> "... all persons who have any material interest in the subject of the litigation should be joined as parties ... "It is the interest of every bondholder to diminish the debt of every other bondholder. Insofar as he succeeds in doing that, he adds to his own security. Each holder, therefore, should be present, both that he may defend his own claims and that he may attack the other claims should there be just occasion for it." (pp. 474, 475).

These principles concerning parties have been applied to the Colorado River. In *Arizona* v. *California et al.*, 298 U. S. 558 (1936) Arizona joined all of the States of the Colorado River Basin, but not the United States, in a suit seeking to quiet title to rights to the permanent use of a certain portion of the waters of the Colorado River. It was argued by Arizona that under the applicable law, the rights of the United States were not involved as they were subject, and secondary, to the right of Arizona to an equitable share in the unappropriated waters. The Court held, however, that this contention could not be judicially determined in a proceeding to which the United States was not a party, and in which it could not be heard. The Court went further to state:

> "Although no decree rendered in its absence can bind or affect the United States, that fact is not an inducement for this Court to decide the rights of the states which are before it by a decree which, because of the absence of the United States, could have no finality. *California* v. *Southern Pacific Co.*, 157 U. S. 229, 251, 257; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 235, 245-247; *International Postal Supply Co.* v. *Bruce*, 194 U. S. 601, 606; *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158, 163". (pp. 571-572).

Upon the same principles the absent States of Colorado, New Mexico, Utah and Wyoming are necessary parties to the present suit.

III

NEW MEXICO AND UTAH ARE NECESSARY PARTIES TO THIS ACTION BECAUSE THEY ARE STATES WHICH ARE IN PART WITHIN THE LOWER BASIN, IN ADDITION TO THE REASONS WHICH MAKE THEM NECESSARY PARTIES AS STATES OF THE UPPER DIVISION AND OF THE UPPER BASIN.

A. New Mexico, Utah, Arizona, California and Nevada have undivided interests under the Colorado River Compact in the "common fund" of water available to the Lower Basin.

The Colorado River Compact defines the Lower Basin in terms which include portions of New Mexico and Utah, as well as portions of Arizona, California and Nevada. (Article II(g).)

The Colorado River Compact makes no allocation among the five States of the uses of water available to the Lower Basin as a whole, and they have not agreed upon an allocation. (The relation of the Statutory Compact between the United States and California to this question is discussed later in this brief.)

The rights of Arizona, California and Nevada cannot be determined without concurrently determining the rights of New Mexico and Utah in the "common fund" of water available under the Colorado River Compact to five States of the Lower Basin. (California's Answer to Arizona's Complaint, par. 61, p. 64; par. 63, p. 66.)

B. The meaning and effect of the Colorado River Compact and the Boulder Canyon Project Act are in controversy in respects which specifically affect New Mexico and Utah as States which are in part within the Lower Basin.

(1) There is controversy as to whether the "rights which may now exist" to the use of the waters of the Virgin River in Nevada and Utah, and the Little Colorado River in New Mexico and Arizona (streams which enter the main stream below Lee Ferry) are accountable under, and protected by, Article III(a) of the Compact. California as-

serts the affirmative. (Answer to Arizona's Complaint, par. 8, p. 12.) Arizona says that all uses under Article III(a) are to be taken from water flowing at Lee Ferry. (Reply to California's Answer, par. 8, p. 16.)

(2) There is controversy as to whether the "rights which may now exist" to the use of the waters of the Gila River System in New Mexico are accountable under, and protected by, Article III(a) of the Compact. California asserts that they are: Arizona says they are not, but are covered by Article III(b). (Reply to California's Answer, par. 8, 9, pp. 16, 17.)

(3) There is controversy as to whether Nevada's share in any class of water has been determined. Nevada asserts that they have not (Petition, par. XII), Arizona that they have (Answer to Nevada's Petition, par. 12).

(4) There is controversy as to whether rights to the "increase of use" under Article III(b) may be acquired by appropriation (including contracts with the United States with respect to water stored by it), as California contends (Answer to Arizona's Complaint, par. 9, p. 13), or only by agreement among the five States in the Lower Basin, as Nevada contends (Petition of Intervention, par. VIII, pp. 13, 14; par. XVIII, p. 19).

(5) There is controversy as to whether the burden of the Mexican Water Treaty on the Lower Basin, in case "surplus" above the aggregate of the quantities specified in Articles III(a) and III(b) is not sufficient to meet it, falls first on the uses covered by Article III(b) as California contends (Answer to Arizona's Complaint, par. 10, p. 14), or on the uses covered by Article III(a), as Arizona contends (Reply to California's Answer, par. 10, p. 18).

(6) There is controversy as to whether the term "beneficial consumptive use" shall be given a different meaning on the tributary systems, including the Virgin and Gila Rivers, than on the main stream. The affirmative is as-

serted by Arizona (Complaint, par. XXII, p. 26) and Nevada (Petition of Intervention, par. XVIII, p. 20), the negative by California (Answer to Arizona's Complaint, par. 8, p. 12).

C. The meaning and effect of the Statutory Compact between the United States and California, evidenced by the Boulder Canyon Project Act and the California Limitation Act, are in controversy in respects which specifically affect New Mexico and Utah as States which are in part within the Lower Basin.

(1) There is controversy as to whether California is excluded by the terms of the Statutory Compact from participation in the increase of use permitted to the Lower Basin by Article III(b) of the Compact. Arizona asserts the affirmative (Complaint, par. XXII, p. 25). The negative is asserted by California (Answer to Arizona's Complaint, par. 27, p. 27), and Nevada (Petition of Intervention, par. XVIII, p. 20).

(2) There is controversy as to whether the right of the Lower Basin to the increase of use permitted by Article III(b) relates to all water of the Colorado River System in the Lower Basin as is asserted by California (Answer to Arizona's Complaint, par. 9, p. 13; par. 63, p. 66) and Nevada (Petition of Intervention, par. XIV, p. 18; par. XVIII, p. 20), or whether this right is limited to the waters of the Gila River and is available only to Arizona and New Mexico, as Arizona contends, excluding not only California but Nevada and Utah. (Reply to California's Answer, par. 9, p. 17).

(3) There is controversy as to the availability of "surplus" waters for use in the Lower Basin under the Statutory Compact, and the rights of the five States to make use of it.

D. Arizona is not authorized to speak for or commit New Mexico or Utah.

Arizona's purported recognition of the rights of New Mexico and Utah (Complaint, Prayer, p. 30), based upon Arizona's interpretation of the Compact, does not bind those States, (see also Nevada's Petition of Intervention, par. XIII(b), p. 16). New Mexico and Utah may or may not agree with Arizona's interpreations of the Compact and of their rights thereunder, and in any event those rights must be determined either by decree of this Court or interstate compact. Arizona's asserted willingness to negotiate an agreement with these two States has not materialized in any compact with them in the past 32 years.

E. The controversy as to the rights and obligations of the Lower Basin cannot be effectively resolved in the presence of only three, and the absence of two, of the five States sharing those rights and obligations.

The States of New Mexico and Utah, as States lying in part within the Lower Basin, participate in undetermined amounts in the right to beneficial consumptive use of a "common fund" of water available for use in the Lower Basin under under the Colorado River Compact. As such their interests require their joinder as necessary parties for an effective settlement of the presnt controversy.

A case in point is *Williams* v. *Bankhead*, 19 Wall. 563 (U. S. 1874). There a specific fund of money was in dispute. An absent party who claimed an interest in the fund was held indispensable to the action by the court on the basis that any decree disposing of the fund would directly affect her interest therein. Similarly in *United States* v. *Bank of New York & Trust Company*, 296 U. S. 463 (1936), involving specific funds, the court stated:

> "... there are numerous persons whose claims in relation to these funds are in the course of adjudication. . . : they are entitled to be heard and they are indispensable parties to any proceeding for the disposition of the property involved." (p. 480)

The absent States of New Mexico and Utah are entitled to be heard on their undefined rights to the common fund of Lower Basin water, and conversely if they are not joined, a determination among the present parties of Lower Basin rights would be subject to later disruption in any subsequent litigation by them. As stated by the court in *Barney* v. *Baltimore*, 6 Wall. 280 (U. S. 1868) in holding absent co-heirs indispensable to an action for partition brought by one of the heirs:

> "If a decree is made, which is intended to bind them, it is manifestly unjust to do this when they are not parties to the suit, and have no opportunity to be heard. But as the decree cannot bind them, the court cannot for that very reason afford the relief asked, to the other parties." (p. 285)

See also *Russell* v. *Clark's Executors*, 7 Cranch 69 (U. S. 1812); *Franz* v. *Buder*, 11 F. 2d 854 (8th Cir. 1926), *cert. denied* 273 U. S. 756 (1927); *Young* v. *Powell*, 179 F. 2d 147 (5th Cir. 1950), *cert. denied* 339 U. S. 948.

Accordingly, the States of Utah and New Mexico must be joined as parties to the suit to give complete relief to the present parties with respect to the water available to the Lower Basin.

IV

THE FOUR ABSENT STATES ARE NECESSARY PARTIES TO THIS ACTION IN THEIR CAPACITY AS THIRD PARTY BENEFICIARIES OF THE STATUTORY COMPACT BETWEEN THE UNITED STATES AND CALIFORNIA EVIDENCED BY THE BOULDER CANYON PROJECT ACT AND THE CALIFORNIA LIMITATION ACT.

A. The continued existence of the Statutory Compact as a necessary accompaniment to a Six-State Colorado River Compact may not be determined in the absence of all parties to the contract.

The allegation by Arizona that she ratified the Colorado River Compact in 1944, thus creating a Seven-State Compact, is in issue. This raises the question of whether the

Statutory Compact between the United States and California, wherein California agreed to certain limitations upon her uses for the benefit of Colorado, New Mexico, Utah and Wyoming (as well as the present parties of Nevada and Arizona), remained in effect if Arizona should be held to have effectively ratified the Compact. This question can only be decided if all the parties to the Six-State Compact are joined to the suit. *Shields v. Barrow*, 17 How. 130 (U.S. 1855); *Northern Indiana R.R. v. Michigan Central R.R.*, 15 How. 233 (U.S. 1854); *Ward v. Deavers*, 203 F. 2d 72 (D.C. Cir. 1953); *Metropolis Theatre Co. v. Barkhausen*, 170 F. 2d 481 (7th Cir. 1948), *cert. denied*, 336 U.S. 945 (1949); *Lawrence v. Sun Oil Co.*, 166 F. 2d 466 (5th Cir. 1948); *Vincent Oil Co. v. Gulf Refining Co.*, 193 Fed. 434 (5th Cir. 1912); *Kleinschmidt v. Kleinschmidt Laboratories, Inc.*, 89 F. Supp. 869 (N.D. Ill. 1950); *see Roos v. Texas Co.*, 23 F. 2d 171, 172 (2d Cir. 1927), *cert. denied*, 277 U. S. 587 (1928). In *Shields v. Barrow*, the case in which this Court formulated the classic definitions of necessary and indispensable parties, it was held that all parties to a contract are indispensable in an action for the rescission of that contract.

B. The four absent States are necessary parties to Arizona's suit because all joint beneficiaries of a contract must be joined in an action by any one of them to determine the obligations of the promisor.

California made a single promise in the California Limitation Act, pursuant to the Boulder Canyon Project Act, for the joint benefit of all six of the other States in the Colorado River Basin. The United States is the other principal to that agreement. The present controversy among Arizona, California, Nevada and the United States raises issues of interpretation affecting the rights of the four absent beneficiaries—Colorado, New Mexico, Utah and Wyoming. All six joint beneficiaries must be parties to the action if these issues are to be resolved.

It is well established that in an action by a joint obligee against the obligor, all joint obligees are necessary parties and also are indispensable when indispensability is in issue. *Fauni v. Tesson*, 1 Black 309 (U. S. 1862); *Fremont v. W. A. Sheaffer Pen Co.*, 209 F. 2d 627 (8th Cir. 1954); *National City Bank v. Harbin Electric Joint-Stock Co.*, 28 F. 2d 468 (9th Cir. 1928); *Roos v. Texas Co.*, 23 F. 2d 171 (2d Cir. 1927), *cert. denied*, 277 U. S. 587 (1928); *Himes v. Schaehl*, 257 Fed. 39 (3d Cir. 1919); *Edgell v. Felder*, 84 Fed. 69 (5th Cir. 1897); *McAulay v. Moody*, 185 Fed. 144 (C. C. Ore. 1911). The rule is designed to protect the obligor from possible harassment and multiplicity of suits upon his single promise or duty. Any determination of California's rights and obligations under the Statutory Compact in the present suit would be open to later disruption in a subsequent suit by any one of the absent beneficiaries — Colorado, New Mexico, Utah or Wyoming.

While third party beneficiaries technically are not promisees, where they hold joint rights they must be treated like joint obligees for the purpose of compulsory joinder. 4 CORBIN, CONTRACTS, Sec. 940 (1951); RESTATEMENT, CONTRACTS, Sec. 129, Comment *a* (1932).

The absent States of Colorado, New Mexico, Utah and Wyoming are necessary parties to any action to interpret or enforce the Statutory Compact between the United States and California.

V

THE FOUR ABSENT STATES ARE NECESSARY PARTIES TO THE ADJUDICATION OF THE CLAIMS OF THE UNITED STATES TO THE WATERS OF THE COLORADO RIVER SYSTEM.

A. The claims which the United States asserts "as against the parties to this cause, to the use of waters of the Colorado River and its tributaries" are equally claims as against all the States of the Colorado River Basin.

The following claims asserted by the United States "as against the parties to this cause" affect the four absent States:

(1) To supply all projects in the Lower Basin (Petition of Intervention of the United States, par. XXX, p. 25); but it is admitted that the requirements of these projects exceed the quantity of water available to that Basin under Articles III(a) and III(b) of the Compact (Petition, par. XXXIII, p. 33). This involves, therefore, an adjudication of the right of the United States in the Lower Basin, as against the Upper, to store and contract for the delivery of quantities of water surplus to the quantities specified in those articles. The Government's contracts require, for their performance, nearly 8,500,000 acre-feet per annum from the main stream alone (Petition, par. XV, p. 14; par. XVIII, p. 17; par. XIX, p. 17), beside the uses on the Gila (par. XXIV, p. 22) and the "diversion rights" of 1,747,250 acre-feet per annum for Indians (par. XXVII, Appendix IIA). The Government asserts that all its contracts are valid (Petition, par. XXXI(a), p. 27).

(2) To fulfill obligations arising from international treaties and conventions. (Petition of Intervention par. XXX, p. 25). This involves:

(a) The obligations of the States of the Upper Division under Article III(c) and III(d) of the Colorado River Compact, and

(b) The effect on Compact rights and obligations of the so-called "escape clause" of Article 10 of the Mexican Water Treaty, which allows reduction in the annual guaranteed delivery to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty.

(3) To fulfill the Government's obligations to Indians and Indian tribes (Petition, Par. XXX, p. 25). This involves:

(a) The magnitude and priority of these claims. The United States is understood to reserve the right under paragraphs XXVII (p. 23) and XXXVII (p. 39) of its Petition of Intervention to assert that Indian rights are prior and superior to those of all other claimants to the waters of the Colorado River System.

(b) The question of whether or not uses under Indian rights are chargeable to the Basin and the State in which they occur. The United States is understood to reserve the right, under the language of paragraphs XVII (p. 23) and XXXVII (p. 38) of its Petition of Intervention, to assert that Indian uses and rights are not covered at all by the Colorado River Compact, but constitute uses outside of (as well as superior to) the quantities of uses referred to in the Compact. Arizona's position upon this point is ambiguous (Reply to California's Answer, par. 14, p. 19). All other States in the Basin assert, in effect, that Indian uses and other federal uses are chargeable under the Compact to the Basin and State in which they occur. (California, Answer to Arizona's Complaint, par. 14, p. 16; Nevada, Petition of Intervention, par. XV, p. 18; Upper Colorado River Basin Compact (63 Stat. 31, Appendix 30, Art. VII.)

(c) What the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and

(d) What rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins.

(4) To protect its interests in fish and wildlife, flood control and navigation. (Petition, par. XXX, p. 25.) This involves:

(a) The impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona, Nevada and California, and

(b) The question of accounting under the Compact.

(5) For use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties of this cause" for these functions, it has similar claims to all the waters of the Colorado River System.

B. The claims which the United States asserts involve questions of law common to all the States of the Colorado River Basin.

These include:

(1) The power of the United States to impound and dispose of water independently of rights derived from the States;

(2) The extent of its obligations under treaties and contracts, and the impact thereof upon rights of domestic water users;

(3) How its claims to the use of water shall be measured;

(4) The extent to which its rights and obligations are controlled by the Colorado River Compact;

(5) The extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

C. Certain of the claims of the United States, if sustained and held to be outside of the Compact, may render the Colorado River Compact incapable of operation.

(1) If the uses of Indians throughout the Colorado River Basin are not chargeable against beneficial consumptive uses under the Colorado River Compact, and are held to be prior and superior in right to the uses which are chargeable, there may not be sufficient water in the entire Colorado River System to service those claims and the Mexican Water Treaty, and to sustain the uses contemplated by the Compact;

(2) So also with the undefined claims for use by the Bureau of Land Management and the Forest Service, which, together, administer substantially all of the public lands in the Colorado River Basin.

D. The claims of the United States to the waters of the Colorado River System cannot be effectively adjudicated in the absence of four States which have rights and obligations with respect to the waters of that System.

The claims of the United States are asserted independently of the Colorado River Compact. If they are sustained to the use of Colorado River System waters, the interests of the absent States in the System waters will be materially affected, for rights would be decreed not only to the Lower Basin's Compact share of water; but to the additional amounts requested by the Federal Government, which could come only from the whole River System. Under the doctrine of the *Shields* case (17 How. 130 (U. S. 1854)) the absent States would hence qualify as indispensable parties.

The fact that when claims to Colorado River System water are asserted independently of the Colorado River Compact, all parties having an interest in the System waters must be joined, was recognized by Arizona in the first three cases of *Arizona* v. *California* where the States of Colorado, New Mexico, Nevada, Utah and Wyoming were joined as defendants with California. 283 U. S. 423 (1931); 292 U. S. 341 (1934); 298 U. S. 558 (1936).

In *Nebraska* v. *Wyoming*, 295 U. S. 40 (1935), Wyoming moved to dismiss Nebraska's Bill of Complaint on the ground, among others, that the State of Colorado was an indispensable party to Nebraska's suit for an equitable apportionment against Wyoming of the North Platte River. No interstate compact or statutory compact existed on the North Platte River and the only allegation in the Bill of Complaint touching Colorado was that the river in question had its source in Colorado. The court, looking to the Bill of Complaint, held that Colorado was not an indispensable party merely because of the allegation that the North Platte River arises in that State and drains a considerable area therein; more than that allegation of fact would be necessary. The court said further, however:

> "We need not determine whether Colorado would be a proper party, or whether at a later stage of the cause pleadings or proofs may disclose a necessity to bring her into the suit."

A Master was appointed. 296 U. S. 542 (1935). Subsequently Wyoming filed an Amended and Supplemental Answer alleging the State of Colorado to be a necessary and indispensable party. The allegations were that thirty per cent of the waters in controversy originated in Colorado, that Colorado and its citizens threatened the diversion of a large quantity of water, that defendant would be subject to further litigation if Colorado were not made a party, and that a fair allocation of water could not be made upon any basis without at the same time determining the rights of Colorado. (Amended and Supplemental Answer, paragraph Twentieth, filed Nov. 30,

1935.) This Court, on the basis of these allegations, ordered that Colorado be made a party. 296 U.S. 553 (1935). The final decree adjudicated the rights of all three States and the United States, which had intervened, even though Colorado had taken the position she should be dismissed. *Nebraska* v. *Wyoming and Colorado*, 325 U. S. 589 (1945).

The claims of the United States in the present case, like the claims of *Nebraska* in *Nebraska* v. *Wyoming and Colorado*, asserted in both cases independently of any Compact, cannot be adjudicated piecemeal against the lower States in the absence of the upper States.

VI

CONCLUSION.

The States of Colorado, New Mexico, Utah and Wyoming are necessary parties in the pending case of *Arizona* v. *California et al.*, and must be joined as such for a full and effective settlement of the controversy in that case. They are necessary because they are parties to the Colorado River Compact, because they, together with Arizona and Nevada, are beneficiaries of the Statutory Compact between the United States and California evidenced by the Boulder Canyon Project Act and the California Limitation Act, and because the claims of the United States affect all of the waters of the Colorado River System. New Mexico and Utah are necessary parties for the additional reason that they have interests in the Lower Basin in common with Arizona, California and Nevada.

For all these reasons the motion to join these four States as parties should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1954.

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

APPENDIXES TO THE ANSWER.

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APPENDIX No. 29.

Treaty Series 994

UTILIZATION OF WATERS OF THE COLORADO AND TIJUANA RIVERS AND OF THE RIO GRANDE

TREATY BETWEEN THE UNITED STATES OF AMERICA AND MEXICO

Signed at Washington February 3, 1944.

AND PROTOCOL

Signed at Washington November 14, 1944.

Ratification advised by the Senate of the United States of America April 18, 1945, subject to certain understandings.

Ratified by the President of the United States of America November 1, 1945, subject to said understandings.

Ratified by Mexico October 16, 1945.

Ratifications exchanged at Washington November 8, 1945.

Proclaimed by the President of the United States of America November 27, 1945, subject to said understandings.

Effective November 8, 1945.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas a treaty between the United States of America and the United Mexican States relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, was signed by their respective Plenipotentiaries in Washington on February 3, 1944, and a protocol supplementary to the said treaty was signed by their respective Plenipotentiaries in Washington on November 14, 1944, the originals of which treaty and protocol, in English and Spanish languages, are word for word as follows:

[The Spanish is omitted.]

The Government of the United States of America and the Government of the United Mexican States: animated by the sincere spirit of cordiality and friendly cooperation which happily governs the relations between them; taking into account the fact that Articles VI and VII of the Treaty of Peace, Friendship and Limits between the United States of America and the United Mexican States signed at Guadalupe Hidalgo on February 2, 1848,[1] and Article IV of the boundary treaty between the two countries signed at the City of Mexico December 30, 1853[2] regulate the use of the waters of the Rio

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[1] [Treaty Series 207; 9 Stat. 922; 18 Stat. (pt. 2; Public Treaties) 492.]

[2] [Treaty Series 208; 10 Stat. 1031; 18 Stat. (pt. 2, Public Treaties) 503.]

Grande (Rio Bravo) and the Colorado River for purposes of navigation only; considering that the utilization of these waters for other purposes is desirable in the interest of both countries, and desiring, moreover, to fix and delimit the rights of the two countries with respect to the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof, have resolved to conclude a treaty and for this purpose have named as their plenipotentiaries:

The President of the United States of America:

Cordell Hull, Secretary of State of the United States of America, George S. Messersmith, Ambassador Extraordinary and Plenipotentiary of the United States of America in Mexico, and Lawrence M. Lawson, United States Commissioner, International Boundary Commission, United States and Mexico; and,

The President of the United Mexican States:

Francisco Castillo Nájera, Ambássador Extrordinary and Plenipotentiary of the United Mexican States in Washington, and Rafael Fernández MacGregor, Mexican Commissioner, International Boundary Commission, United States and Mexico; who, having communicated to each other their respective Full Powers and having found them in good and due form, have agreed upon the following:

I—Preliminary Provisions.

ARTICLE 1.

For the purposes of this Treaty it shall be understood that:

(a) "The United States" means the United States of America.

(b) "Mexico" means the United Mexican States.

(c) "The Commission" means the International Boundary and Water Commission, United States and Mexico, as described in Article 2 of this Treaty.

(d) "To divert" means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods.

(e) "Point of diversion" means the place where the act of diverting the water is effected.

(f) "Conservation capacity of storage reservoirs" means that part of their total capacity devoted to holding and conserving the water for disposal thereof as and when required, that is, capacity additional to that provided for silt retention and flood control.

(g) "Flood discharges and spills" means the voluntary or involuntary discharge of water for flood control as distinguished from releases for other purposes.

(h) "Return flow" means that portion of diverted water that eventually finds it way back to the source from which it was diverted.

(i) "Release" means the deliberate discharge of stored water for conveyance elsewhere or for direct utilization.

(j) "Consumptive use" means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream.

(k) "Lowest major international dam or reservoir" means the major international dam or reservoir situated farthest downstream.

(l) "Highest major international dam or reservoir" means the major international dam or reservoir situated farthest upstream.

ARTICLE 2.

The International Boundary Commission established pursuant to the provisions of the Convention between the United States and Mexico signed in Washington March 1, 1889[1] to facilitate the carrying out of the principles contained in the Treaty of November 12, 1884[2] and to avoid difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande (Rio Bravo) and the Colorado River shall hereafter be known as the International Boundary and Water Commission, United States and Mexico, which shall continue to function for the entire period during which the present Treaty shall continue in force. Accordingly, the term of the Convention of March 1, 1889 shall be considered to be indefinitely extended, and the Convention of November

[1] [Treaty Series 232; 26 Stat. 1512.]

[2] [Treaty Series 226; 24 Stat. 1011.]

21, 1900[3] between the United States and Mexico regarding that Convention shall be considered completely terminated.

The application of the present Treaty; the regulation and exercise of the rights and obligations which the two Governments assume thereunder, and the settlement of all disputes to which its observance and execution may give rise are hereby entrusted to the International Boundary and Water Commission, which shall function in conformity with the powers and limitations set forth in this Treaty.

The Commission shall in all respects have the status of an international body, and shall consist of a United States Section and a Mexican Section. The head of each Section shall be an Engineer Commissioner. Wherever there are provisions in this Treaty for joint action or joint agreement by the two Governments, or for the furnishing of reports; studies or plans to the two Governments, or similar provisions, it shall be understood that the particular matter in question shall be handled by or through the Department of State of the United States and the Ministry of Foreign Relations of Mexico.

The Commission or either of its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary. Each Government shall accord diplomatic status to the Commissioner, designated by

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[3] [Treaty Series 244; 31 Stat. 1936.]

the other Government. The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Government as members of its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immunities appertaining to diplomatic officers. The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country.

The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country. Neither Section shall assume jurisdiction or control over works located within the limits of the country of the other without the express consent of the Government of the latter. The works constructed, acquired or used in fulfillment of the provisions of this Treaty and located wholly within the territorial limits of either country, although these works may be international in character, shall remain, except as herein otherwise specifically provided, under the exclusive jurisdiction and control of the Section of the Commission in whose country the works may be situated.

The duties and powers vested in the Commission by this Treaty shall be in addition to those vested in the International Boundary Commission by the Convention of March 1, 1889 and other pertinent treaties and agree-

ments in force between the two countries except as the provisions of any of them may be modified by the present Treaty.

Each Government shall bear the expenses incurred in the maintenance of its Section of the Commission. The joint expenses, which may be incurred as agreed upon by the Commission, shall be borne equally by the two Governments.

ARTICLE 3.

In matters in which the Commission may be called upon to make provision for the joint use of international waters, the following order of preferences shall serve as a guide:

1. Domestic and municipal uses.
2. Agriculture and stock-raising.
3. Electric power.
4. Other industrial uses.
5. Navigation.
6. Fishing and hunting.
7. Any other beneficial uses which may be determined by the Commission.

All of the foregoing uses shall be subject to any sanitary measures or works which may be mutually agreed upon by the two Governments, which hereby agree to give preferential attention to the solution of all border sanitation problems.

II—Rio Grande (Rio Bravo).

ARTICLE 4.

The waters of the Rio Grande (Rio Bravo) between Fort Quitman, Texas and the Gulf of Mexico are hereby allotted to the two countries in the following manner:

A. To Mexico:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the San Juan and Alamo Rivers, including the return flow from the lands irrigated from the latter two rivers.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(c) Two-thirds of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, subject to the provisions of subparagraph (c) of paragraph B of this Article.

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

B. To the United States:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the Pecos and Devils Rivers, Goodenough Spring, and Alamito, Terlingua, San Felipe and Pinto Creeks.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(c) One-third of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, provided that this third shall not be less, as an average amount in cycles of five consecutive years, than 350,000 acre-feet (431,721,000 cubic meters) annually. The United States shall not acquire any right by the use of the waters of the tributaries named in this subparagraph, in excess of the said 350,000 acre-feet (431,721,000 cubic meters) annually, except the right to use one-third of the flow reaching the Rio Grande (Rio Bravo) from said tributaries, although such one-third may be in excess of that amount.

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

In the event of extraordinary drought or serious accident to the hydraulic systems on the measured Mexican tributaries, making it difficult for Mexico to make available the run-off of 350,000 acre-feet (431,721,000 cubic meters) annually, allotted in subparagraph (c) of paragraph B of this Article to the United States as the minimum contribution from the aforesaid Mexican tributaries, any deficiencies existing at the end of the aforesaid five-year cycle shall be made up in the following five-year cycle with water from the said measured tributaries.

Whenever the conservation capacities assigned to the United States in at least two of the major international reservoirs, including the highest major reservoir, are filled with waters belonging to the United States, a cycle of five years shall be considered as terminated and all debits fully paid; whereupon a new five-year cycle shall commence.

ARTICLE 5.

The two Governments agree to construct jointly, through their respective Sections of the Commission, the following works in the main channel of the Rio Grande (Rio Bravo):

I. The dams required for the conservation, storage and regulation of the greatest quantity of the annual flow of the river in a way to ensure the continuance of existing uses and the development of the greatest number of feasible projects, within the limits imposed by the water allotments specified.

II. The dams and other joint works required for the diversion of the flow of the Rio Grande (Rio Bravo).

One of the storage dams shall be constructed in the section between Santa Helena Canyon and the mouth of the Pecos River; one in the section between Eagle Pass and Laredo, Texas (Piedras Negras and Nuevo Laredo in Mexico); and a third in the section between Laredo and Roma, Texas (Nuevo Laredo and San Pedro de Roma in Mexico). One or more of the stipulated dams may be omitted, and others than those enumerated may be built, in either case as may be determined by the Commission, subject to the approval of the two Governments.

In planning the construction of such dams the Commission shall determine:

(a) The most feasible sites;

(b) The maximum feasible reservoir capacity at each site;

(c) The conservation capacity required by each country at each site, taking into consideration the amount and regiment of its allotment of water and its contemplated uses;

(d) The capacity required for retention of silt;

(e) The capacity required for flood control.

The conservation and silt capacities of each reservoir shall be assigned to each country in the same proportion as the capacities required by each country in such reservoir for conservation purposes. Each country shall have an undivided interest in the flood control capacity of each reservoir.

The construction of the international storage dams shall start within two years following the approval of the respective plans by the two Governments. The works

shall begin with the construction of the lowest major international storage dam, but works in the upper reaches of the river may be constructed simultaneously. The lowest major international storage dam shall be completed within a period of eight years from the date of the entry into force of this Treaty.

The construction of the dams and other joint works required for the diversion of the flows of the river shall be initiated on the dates recommended by the Commission and approved by the two Governments.

The cost of construction, operation and maintenance of each of the international storage dams shall be prorated between the two Governments in proportion to the capacity allotted to each country for conservation purposes in the reservoir at such dam.

The cost of construction, operation and maintenance of each of the dams and other joint works required for the diversion of the flows of the river shall be prorated between the two Governments in proportion to the benefits which the respective countries receive therefrom, as determined by the Commission and approved by the two Governments.

ARTICLE 6.

The Commission shall study, investigate, and prepare plans for flood control works, where and when necessary, other than those referred to in Article 5 of this Treaty, on the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. These works may include levees along the river, floodways and grade-control structures; and works for the canalization, rectification and artificial channeling of reaches of the river. The Commission shall report to the two Governments the works

which should be built, the estimated cost thereof, the part of the works to be constructed by each Government, and the part of the works to be operated and maintained by each Section of the Commission. Each Government agrees to construct, through its Section of the Commission, such works as may be recommended by the Commission and approved by the two Governments. Each Government shall pay the costs of the works constructed by it and the costs of operation and maintenance of the part of the works assigned to it for such purpose.

ARTICLE 7.

The Commission shall study, investigate and prepare plans for plants for generating hydro-electric energy which it may be feasible to construct at the international storage dams on the Rio Grande (Rio Bravo). The Commission shall report to the two Governments in a Minute the works which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. Each Government agrees to construct, through its Section of the Commission, such works as may be recommended by the Commission and approved by the two Governments. Both Governments, through their respective Sections of the Commission, shall operate and maintain jointly such hydro-electric plants. Each Government shall pay half the cost of the construction, operation and maintenance of such plants, and the energy generated shall be assigned to each country in like proportion.

ARTICLE 8.

The two Governments recognize that both countries have a common interest in the conservation and storage of waters in the international reservoirs and in the maxi-

mum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them. Accordingly, within the year following the placing in operation of the first of the major international storage dams which is constructed, the Commission shall submit to each Government for its approval, regulations for the storage, conveyance and delivery of the waters of the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. Such regulations may be modified, amended or supplemented when necessary by the Commission, subject to the approval of the two Governments. The following general rules shall severally govern until modified or amended by agreement of the Commission, with the approval of the two Governments:

(a) Storage in all major international reservoirs above the lowest shall be maintained at the maximum possible water level, consistent with flood control, irrigation use and power requirements.

(b) Inflows to each reservoir shall be credited to each country in accordance with the ownership of such inflows.

(c) In any reservoir the ownership of water belonging to the country whose conservation capacity therein is filled, and in excess of that needed to keep it filled, shall pass to the other country to the extent that such country may have unfilled conservation capacity, except that one country may at its option temporarily use the conservation capacity of the other country not currently being used in any of the upper reservoirs; provided that in the event of flood discharge or spill occurring while one country is using the conservation capacity of the other,

all of such flood discharge or spill shall be charged to the country using the other's capacity, and all inflow shall be credited to the other country until the flood discharge or spill ceases or until the capacity of the other country becomes filled with its own water.

(d) Reservoir losses shall be charged in proportion to the ownership of water in storage. Releases from any reservoir shall be charged to the country requesting them, except that releases for the generation of electrical energy, or other common purpose, shall be charged in proportion to the ownership of water in storage.

(e) Flood discharges and spills from the upper reservoirs shall be divided in the same proportion as the ownership of the inflows occurring at the time of such flood discharges and spills; except as provided in subparagraph (c) of this Article. Flood discharges and spills from the lowest reservoir shall be divided equally, except that one country, with the consent of the Commission, may use such part of the share of the other country as is not used by the latter country.

(f) Either of the two countries may avail itself, whenever it so desires, of any water belonging to it and stored in the international reservoirs, provided that the water so taken is for direct beneficial use or for storage in other reservoirs. For this purpose the Commissioner of the respective country shall give appropriate notice to the Commission, which shall prescribe the proper measures for the opportune furnishing of the water.

ARTICLE 9.

(a) The channel of the Rio Grande (Rio Bravo) may be used by either of the two countries to convey water belonging to it.

(b) Either of the two countries may, at any point on the main channel of the river from Fort Quitman, Texas to the Gulf of Mexico, divert and use the water belonging to it and may for this purpose construct any necessary works. However, no such diversion or use, not existing on the date this Treaty enters into force, shall be permitted in either country, nor shall works be constructed for such purpose, until the Section of the Commission in whose country the diversion or use is proposed has made a finding that the water necessary for such diversion or use is available from the share of that country, unless the Commission has agreed to a greater diversion or use as provided by paragraph (d) of this Article. The proposed use and the plans for the diversion works to be constructed in connection therewith shall be previously made known to the Commission for its information.

(c) Consumptive uses from the main stream and from the unmeasured tributaries below Fort Quitman shall be charged against the share of the country making them.

(d) The Commission shall have the power to authorize either country to divert and use water not belonging entirely to such country, when the water belonging to the other country can be diverted and used without injury to the latter and can be replaced at some other point on the river.

(e) The Commission shall have the power to authorize temporary diversion and use by one country of water belonging to the other, when the latter does not need it or is unable to use it, provided that such authorization or the use of such water shall not establish any right to continue to divert it.

(f) In case of the occurrence of an extraordinary drought in one country with an abundant supply of water in the other country, water stored in the international storage reservoirs and belonging to the country enjoying such abundant water supply may be withdrawn, with the consent of the Commission, for the use of the country undergoing the drought.

(g) Each country shall have the right to divert from the main channel of the river any amount of water, including the water belonging to the other country, for the purpose of generating hydro-electric power, provided that such diversion causes no injury to the other country and does not interfere with the international generation of power and that the quantities not returning directly to the river are charged against the share of the country making the diversion. The feasibility of such diversions not existing on the date this Treaty enters into force shall be determined by the Commission, which shall also determine the amount of water consumed, such water to be charged against the country making the diversion.

(h) In case either of the two countries shall construct works for diverting into the main channel of the Rio Grande (Rio Bravo) or its tributaries waters that do not

at the time this Treaty enters into force contribute to the flow of the Rio Grande (Rio Bravo) such water shall belong to the country making such diversion.

(i) Main stream channel losses shall be charged in proportion to the ownership of water being conveyed in the channel at the times and places of the losses.

(j) The Commission shall keep a record of the waters belonging to each country and of those that may be available at a given moment, taking into account the measurement of the allotments, the regulation of the waters in storage, the consumptive uses, the withdrawals, the diversions, and the losses. For this purpose the Commission shall construct, operate and maintain on the main channel of the Rio Grande (Rio Bravo), and each Section shall construct, operate and maintain on the measured tributaries in its own country, all the gaging stations and mechanical apparatus necessary for the purpose of making computations and of obtaining the necessary data for such record. The information with respect to the diversions and consumptive uses on the unmeasured tributaries shall be furnished to the Commission by the appropriate Section. The cost of construction of any new gaging stations located on the main channel of the Rio Grande (Rio Bravo) shall be borne equally by the two Governments. The operation and maintenance of all gaging stations or the cost of such operation and maintenance shall be apportioned between the two Sections in accordance with determinations to be made by the Commission.

III—Colorado River.

ARTICLE 10.

Of the waters of the Colorado River, from any and all sources, there are allotted to Mexico:

(a) A guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) to be delivered in accordance with the provisions of Article 15 of this Treaty.

(b) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the Colorado River in excess of the amount necessary to supply uses in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually to Mexico, the United States undertakes to deliver to Mexico, in the manner set out in Article 15 of this Treaty, additional waters of the Colorado River system to provide a total quantity not to exceed 1,700,000 acre-feet (2,096,931,000 cubic meters) a year. Mexico shall acquire no right beyond that provided by this subparagraph by the use of the waters of the Colorado River system, for any purpose whatsoever, in excess of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually.

In the event of extraordinary drought or serious accident to the irrigation system in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced.

ARTICLE 11.

(a) The United States shall deliver all waters allotted to Mexico wherever these waters may arrive in the bed of the limitrophe section of the Colorado River, with the exceptions hereinafter provided. Such waters shall be made up of the waters of the said river, whatever their origin, subject to the provisions of the following paragraphs of this Article.

(b) Of the waters of the Colorado River allotted to Mexico by subparagraph (a) of Article 10 of this Treaty, the United States shall deliver, wherever such waters may arrive in the limitrophe section of the river, 1,000,000 acre-feet (1,233,489,000 cubic meters) annually from the time the Davis dam and reservoir are placed in operation until January 1, 1980 and thereafter 1,125,000 acre-feet (1,387,675,000 cubic meters) annually, except that, should the main diversion structure referred to in subparagraph (a) of Article 12 of this Treaty be located entirely in Mexico and should Mexico so request, the United States shall deliver a quantity of water not exceeding 25,000 acre-feet (30,837,000 cubic meters) annually, unless a larger quantity may be mutually agreed upon, at a point, to be likewise mutually agreed upon, on the international land boundary near San Luis, Sonora, in which event the quantities of 1,000,000 acre-feet (1,233,489,000 cubic meters) and 1,125,000 acre-feet (1,387,675,000 cubic meters) provided hereinabove as deliverable in the limitrophe section of the river shall be reduced by the quantities to be delivered in the year concerned near San Luis, Sonora.

(c) During the period from the time Davis dam and reservoir are placed in operation until January 1, 1980,

the United States shall also deliver to Mexico annually, of the water allotted to it, 500,000 acre-feet (616,745,000 cubic meters), and thereafter the United States shall deliver annually 375,000 acre-feet (462,558,000 cubic meters), at the international boundary line, by means of the All-American Canal and a canal connecting the lower end of the Pilot Knob Wasteway with the Alamo Canal or with any other Mexican canal which may be substituted for the Alamo Canal. In either event the deliveries shall be made at an operating water surface elevation not higher than that of the Alamo Canal at the point where it crossed the international boundary line in the year 1943.

(d) All the deliveries of water specified above shall be made subject to the provisions of Article 15 of this Treaty.

ARTICLE 12.

The two Governments agree to construct the following works:

(a) Mexico shall construct at its expense, within a period of five years from the date of the entry into force of this Treaty, a main diversion structure below the point where the northernmost part of the international land boundary line intersects the Colorado River. If such diversion structure is located in the limitrophe section of the river, its location, design and construction shall be subject to the approval of the Commission. The Commission shall thereafter maintain and operate the structure at the expense of Mexico. Regardless of where such diversion structure is located, there shall simultaneously be constructed such levees, interior drainage facilities and other works, or improvements to existing works, as in the opinion of the Commission shall be necessary to

protect lands within the United States against damage from such floods and seepage as might result from the construction, operation and maintenance of this diversion structure. These protective works shall be constructed, operated and maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country.

(b) The United States, within a period of five years from the date of the entry into force of this Treaty, shall construct in its own territory and at its expense, and thereafter operate and maintain at its expense, the Davis storage dam and reservoir, a part of the capacity of which shall be used to make possible the regulation at the boundary of the waters to be delivered to Mexico in accordance with the provisions of Article 15 of this Treaty.

(c) The United States shall construct or acquire in its own territory the works that may be necessary to convey a part of the waters of the Colorado River allotted to Mexico to the Mexican diversion points on the international land boundary line referred to in this Treaty. Among these works shall be included: the canal and other works necessary to convey water from the lower end of the Pilot Knob Wasteway to the international boundary, and, should Mexico request it, a canal to connect the main diversion structure referred to in subparagraph (a) of this Article, if this diversion structure should be built in the limitrophe section of the river, with the Mexican system of canals at a point to be agreed upon by the Commission on the international land boundary near San Luis, Sonora. Such works shall be constructed or acquired and operated and maintained by the United States Section at the expense of Mexico. Mexico shall also pay the costs of any sites or rights of way required for such works.

(d) The Commission shall construct, operate and maintain in the limitrophe section of the Colorado River, and each Section shall construct, operate and maintain in the territory of its own country on the Colorado River below Imperial Dam and on all other carrying facilities used for the delivery of water to Mexico, all necessary gaging stations and other measuring devices for the purpose of keeping a complete record of the waters delivered to Mexico and of the flows of the river. All data obtained as to such deliveries and flows shall be periodically compiled and exchanged between the two Sections.

ARTICLE 13.

The Commission shall study, investigate and prepare plans for flood control on the Lower Colorado River between Imperial Dam and the Gulf of California, in both the United States and Mexico, and shall, in a Minute, report to the two Governments the works which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. The two Governments agree to construct, through their respective Sections of the Commission, such works as may be recommended by the Commission and approved by the two Governments, each Government to pay the costs of the works constructed by it. The Commission shall likewise recommend the parts of the works to be operated and maintained jointly by the Commission and the parts to be operated and maintained by each Section. The two Governments agree to pay in equal shares the cost of joint operation and maintenance, and each Government agrees to pay the cost of operation and maintenance of the works assigned to it for such purpose.

ARTICLE 14.

In consideration of the use of the All-American Canal for the delivery to Mexico, in the manner provided in Articles 11 and 15 of this Treaty, of a part of its allotment of the waters of the Colorado River, Mexico shall pay to the United States:

(a) A proportion of the costs actually incurred in the construction of Imperial Dam and the Imperial Dam-Pilot Knob section of the All-American Canal, this proportion and the method and terms of repayment to be determined by the two Governments, which, for this purpose, shall take into consideration the proportionate uses of these facilities by the two countries, these determinations to be made as soon as Davis dam and reservoir are placed in operation.

(b) Annually, a proportionate part of the total costs of maintenance and operation of such facilities, these costs to be prorated between the two countries in proportion to the amount of water delivered annually through such facilities for use in each of the two countries.

In the event that revenues from the sale of hydro-electric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of the facilities named in subparagraph (a) of this Article, the part that Mexico should pay of the costs of said facilities shall be reduced or repaid in the same proportion as the balance of the total costs are reduced or repaid. It is understood that any such revenue shall not become available until the cost of any works which may be constructed for the generation of hydro-electric power at said location has been fully amortized from the revenues derived therefrom.

ARTICLE 15.

A. The water allotted in subparagraph (a) of Article 10 of this Treaty shall be delivered to Mexico at the points of delivery specified in Article 11, in accordance with the following two annual schedules of deliveries by months, which the Mexican Section shall formulate and present to the Commission before the beginning of each calendar year:

Schedule I.

Schedule I shall cover the delivery, in the limitrophe section of the Colorado River, of 1,000,000 acre-feet (1,233,489,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 1,125,000 acre-feet (1,387,675,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 1,000,000 acre-feet (1,233,489,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 600 cubic feet (17.0 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,000 cubic feet (28.3 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

With reference to the 1,125,000 acre-foot (1,387,675,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 675 cubic feet (19.1 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,125 cubic feet (31.9 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

Should deliveries of water be made at a point on the land boundary near San Luis, Sonora, as provided for in Article 11, such deliveries shall be made under a sub-schedule to be formulated and furnished by the Mexican Section. The quantities and monthly rates of deliveries under such sub-schedule shall be in proportion to those specified for Schedule I, unless otherwise agreed upon by the Commission.

Schedule II.

Schedule II shall cover the delivery at the boundary line by means of the All-American Canal of 500,000 acre-feet (616,745,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 375,000 acre-feet (462,558,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 500,000 acre-foot (616,745,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 300 cubic feet (8.5 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 500 cubic feet (14.2 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

With reference to the 375,000 acre-foot (462,558,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 225 cubic feet (6.4 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 375 cubic feet (10.6 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

B. The United States shall be under no obligation to deliver, through the All-American Canal, more than 500,000 acre-feet (616,745,000 cubic meters) annually from the date Davis dam and reservoir are placed in operation until January 1, 1980 or more than 375,000 acre-feet (462,558,000 cubic meters) annually thereafter. If, by mutual agreement, any part of the quantities of water specified in this paragraph are delivered to Mexico

at points on the land boundary otherwise than through the All-American Canal, the above quantities of water and the rates of deliveries set out under Schedule II of this Article shall be correspondingly diminished.

C. The United States shall have the option of delivering, at the point on the land boundary mentioned in subparagraph (c) of Article 11, any part or all of the water to be delivered at that point under Schedule II of this Article during the months of January, February, October, November and December of each year, from any source whatsoever, with the understanding that the total specified annual quantities to be delivered through the All-American Canal shall not be reduced because of the exercise of this option, unless such reduction be requested by the Mexican Section, provided that the exercise of this option shall not have the effect of increasing the total amount of scheduled water to be delivered to Mexico.

D. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States hereby declares its intention to cooperate with Mexico in attempting to supply additional quantities of water through the All-American Canal as such additional quantities are desired by Mexico, if such use of the Canal and facilities will not be detrimental to the United States, provided that the delivery of any additional quantities through the All-American Canal shall not have the effect of increasing the total scheduled deliveries to Mexico. Mexico hereby declares its intention to cooperate with the United States by attempting to curtail deliveries of water through the All-American

Canal in years of limited supply, if such curtailment can be accomplished without detriment to Mexico and is necessary to allow full use of all available water supplies, provided that such curtailment shall not have the effect of reducing the total scheduled deliveries of water to Mexico.

E. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States Section shall so inform the Mexican Section in order that the latter may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet (2,096,931,000 cubic meters). In this circumstance the total quantities to be delivered under Schedules I and II shall be increased in proportion to their respective total quantities and the two schedules thus increased shall be subject to the same limitations as those established for each under paragraph A of this Article.

F. Subject to the limitations as to rates of deliveries and total quantities set out in Schedules I and II, Mexico shall have the right upon thirty days notice in advance to the United States Section, to increase or decrease each monthly quantity prescribed by those schedules by not more than 20% of the monthly quantity.

G. The total quantity of water to be delivered under Schedule I of paragraph A of this Article may be increased in any year if the amount to be delivered under Schedule II is correspondingly reduced and if the limitations as to rates of delivery under each schedule are correspondingly increased and reduced.

IV—Tijuana River.

ARTICLE 16.

In order to improve existing uses and to assure any feasible further development, the Commission shall study and investigate and shall submit to the two Governments for their approval:

(1) Recommendations for the equitable distribution between the two countries of the waters of the Tijuana River system;

(2) Plans for storage and flood control to promote and develop domestic, irrigation and other feasible uses of the waters of this system;

(3) An estimate of the cost of the proposed works and the manner in which the construction of such works or the cost thereof should be divided between the two Governments;

(4) Recommendations regarding the parts of the works to be operated and maintained by the Commission and the parts to be operated and maintained by each Section.

The two Governments through their respective Sections of the Commission shall construct such of the proposed works as are approved by both Governments, shall divide the work to be done or the cost thereof, and shall distribute between the two countries the waters of the Tijuana River system in the proportions approved by the two Governments. The two Governments agree to pay in equal shares the costs of joint operation and maintenance of the works involved, and each Government agrees to pay the cost of operation and maintenance of the works assigned to it for such purpose.

V—General Provisions.

Article 17.

The use of the channels of the international rivers for the discharge of flood or other excess waters shall be free and not subject to limitation by either country, and neither country shall have any claim against the other in respect of any damage caused by such use. Each Government agrees to furnish the other Government, as far in advance as practicable, any information it may have in regard to such extraordinary discharges of water from reservoirs and flood flows on its own territory as may produce floods on the territory of the other.

Each Government declares its intention to operate its storage dams in such manner, consistent with the normal operations of its hydraulic systems, as to avoid, as far as feasible, material damage in the territory of the other.

Article 18.

Public use of the water surface of lakes formed by international dams shall, when not harmful to the services rendered by such dams, be free and common to both countries, subject to the police regulations of each country in its territory, to such general regulations as may appropriately be prescribed and enforced by the Commission with the approval of the two Governments for the purpose of the application of the provisions of this Treaty, and to such regulations as may appropriately be prescribed and enforced for the same purpose by each Section of the Commission with respect to the areas and borders of such parts of those lakes as lie within its territory. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments.

ARTICLE 19.

The two Governments shall conclude such special agreements as may be necessary to regulate the generation, development and disposition of electric power at international plants, including the necessary provisions for the export of electric current.

ARTICLE 20.

The two Governments shall, through their respective Sections of the Commission, carry out the construction of works allotted to them. For this purpose the respective Sections of the Commission may make use of any competent public or private agencies in accordance with the laws of the respective countries. With respect to such works as either Section of the Commission may have to execute on the territory of the other, it shall, in the execution of such works, observe the laws of the place where such works are located or carried out, with the exceptions hereinafter stated.

All materials, implements, equipment and repair parts intended for the construction, operation and maintenance of such works shall be exempt from import and export customs duties. The whole of the personnel employed either directly or indirectly on the construction, operation or maintenance of the works may pass freely from one country to the other for the purpose of going to and from the place of location of the works, without any immigration restrictions, passports or labor requirements. Each Government shall furnish, through its own Section of the Commission, convenient means of identification to the personnel employed by it on the aforesaid works and verification certificates covering all materials, implements, equipment and repair parts intended for the works.

Each Government shall assume responsibility for and shall adjust exclusively in accordance with its own laws all claims arising within its territory in connection with the construction, operation or maintenance of the whole or of any part of the works herein agreed upon, or of any works which may, in the execution of this Treaty, be agreed upon in the future.

ARTICLE 21.

The construction of the international dams and the formation of artificial lakes shall produce no change in the fluvial international boundary, which shall continue to be governed by existing treaties and conventions in force between the two countries.

The Commission shall, with the approval of the two Governments, establish in the artificial lakes, by buoys or by other suitable markers, a practicable and convenient line to provide for the exercise of the jurisdiction and control vested by this Treaty in the Commission and its respective Sections. Such line shall also mark the boundary for the application of the customs and police regulations of each country.

ARTICLE 22.

The provisions of the Convention between the United States and Mexico for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juárez Valley signed on February 1, 1933,[1] shall govern, so far as delimitation of the boundary, distribution of jurisdiction and sovereignty, and relations with private owners are concerned, in any places where works for the artficial channeling, canalization or rectification of the Rio Grande (Rio Bravo) and the Colorado River are carried out.

[1] [Treaty Series 864; 48 Stat. 1621.]

ARTICLE 23.

The two Governments recognize the public interest attached to the works required for the execution and performance of this Treaty and agree to acquire in accordance with their respective domestic laws, any private property that may be required for the construction of the said works, including the main structures and their appurtenances and the construction materials therefor, and for the operation and maintenance thereof, at the cost of the country within which the property is situated, except as may be otherwise specifically provided in this Treaty.

Each Section of the Commission shall determine the extent and location of any private property to be acquired within its own country and shall make the necessary requests upon its Government for the acquisition of such property.

The Commission shall determine the cases in which it shall become necessary to locate works for the conveyance of water or electrical energy and for the servicing of any such works, for the benefit of either of the two countries, in the territory of the other country, in order that such works can be built pursuant to agreement between the two Governments. Such works shall be subject to the jurisdiction and supervision of the Section of the Commission within whose country they are located.

Construction of the works built in pursuance of the provisions of this Treaty shall not confer upon either of the two countries any rights either of property or of jurisdiction over any part whatsoever of the territory of the other. These works shall be part of the territory and be the property of the country wherein they are situated. However, in the case of any incidents occurring on works constructed across the limitrophe part of a river and with

supports on both banks, the jurisdiction of each country shall be limited by the center line of such works, which shall be marked by the Commission, without thereby changing the international boundary.

Each Government shall retain, through its own Section of the Commission and within the limits and to the extent necessary to effectuate the provisions of this Treaty, direct ownership, control and jurisdiction within its own territory and in accordance with its own laws, over all real property—including that within the channel of any river—rights of way and right *in rem*, that it may be necessary to enter upon and occupy for the construction, operation or maintenance of all the works constructed, acquired or used pursuant to this Treaty. Furthermore, each Government shall similarly acquire and retain in its own possession the titles, control and jurisdiction over such works.

ARTICLE 24.

The International Boundary and Water Commission shall have, in addition to the powers and duties otherwise specifically provided in this Treaty, the following powers and duties:

(a) To initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties or agreements in force between the two Governments dealing with boundaries and international waters; to determine, as to such works, their location, size, kind and characteristic specifications; to estimate the cost of

such works; and to recommend the division of such costs between the two Governments, the arrangements for the furnishing of the necessary funds, and the dates for the beginning of the works, to the extent that the matters mentioned in this subparagraph are not otherwise covered by specific provisions of this or any other Treaty.

(b) To construct the works agreed upon or to supervise their construction and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the respective domestic laws of each country. Each Section shall have, to the extent necessary to give effect to the provisions of this Treaty, jurisdiction over the works constructed exclusively in the territory of its country whenever such works shall be connected with or shall directly affect the execution of the provisions of this Treaty.

(c) In general to exercise and discharge the specific powers and duties entrusted to the Commission by this and other treaties and agreements in force between the two countries, and to carry into execution and prevent the violation of the provisions of those treaties and agreements. The authorities of each country shall aid and support the exercise and discharge of these powers and duties, and each Commissioner shall invoke when necessary the jurisdiction of the courts or other appropriate agencies of his country to aid in the execution and enforcement of these powers and duties.

(d) To settle all differences that may arise between the two Governments with respect to the interpretation or ap-

plication of this Treaty, subject to the approval of the two Governments. In any case in which the Commissioners do not reach an agreement, they shall so inform their respective governments reporting their respective opinions and the grounds therefor and the points upon which they differ, for discussion and adjustment of the difference through diplomatic channels and for application where proper of the general or special agreements which the two Governments have concluded for the settlement of controversies.

(e) To furnish the information requested of the Commissioners jointly by the two Governments on matters within their jurisdiction. In the event that the request is made by one Government alone, the Commissioner of the other Government must have the express authorization of his Government in order to comply with such request.

(f) The Commission shall construct, operate and maintain upon the limitrophe parts of the international streams, and each Section shall severally construct, operate and maintain upon the parts of the international streams and their tributaries within the boundaries of its own country, such stream gaging stations as may be needed to provide the hydrographic data necessary or convenient for the proper functioning of this Treaty. The data so obtained shall be compiled and periodically exchanged between the two Sections.

(g) The Commission shall submit annually a joint report to the two Governments on the matters in its charge. The Commission shall also submit to the two Governments joint reports on general or any particular matters at such other times as it may deem necessary or as may be requested by the two Governments.

ARTICLE 25.

Except as otherwise specifically provided in this Treaty, Articles III and VII of the Convention of March 1, 1889 shall govern the proceedings of the Commission in carrying out the provisions of this Treaty. Supplementary thereto the Commission shall establish a body of rules and regulations to govern its procedure, consistent with the provisions of this Treaty and of Articles III and VII of the Convention of March 1, 1889 and subject to the approval of both Governments.

Decisions of the Commission shall be recorded in the form of Minutes done in duplicate in the English and Spanish languages, signed by each Commissioner and attested by the Secretaries, and copies thereof forwarded to each Government within three days after being signed. Except where the specific approval of the two Governments is required by any provision of this Treaty, if one of the Governments fails to communicate to the Commission its approval or disapproval of a decision of the Commission within thirty days reckoned from the date of the Minute in which it shall have been pronounced, the Minute in question and the decisions which it contains shall be considered to be approved by that Government. The Commissioners, within the limits of their respective jurisdictions, shall execute the decisions of the Commission that are approved by both Governments.

If either Government disapproves a decision of the Commission the two Governments shall take cognizance of the matter, and if an agreement regarding such matter is reached between the two Governments, the agreement shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

VI—Transitory Provisions.

ARTICLE 26.

During a period of eight years from the date of the entry into force of this Treaty, or until the beginning of operation of the lowest major international reservoir on the Rio Grande (Rio Bravo), should it be placed in operation prior to the expiration of said period, Mexico will cooperate with the United States to relieve, in times of drought, any lack of water needed to irrigate the lands now under irrigation in the Lower Rio Grande Valley in the United States, and for this purpose Mexico will release water from El Azúcar reservoir on the San Juan River and allow that water to run through its system of canals back into the San Juan River in order that the United States may divert such water from the Rio Grande (Rio Bravo). Such releases shall be made on condition that they do not affect the Mexican irrigation system, provided that Mexico shall, in any event, except in cases of extraordinary drought or serious accident to its hydraulic works, release and make available to the United States for its use the quantities requested, under the following conditions: that during the said eight years there shall be made available total of 160,000 acre-feet (197,358,000 cubic meters) and up to 40,000 acre-feet (49,340,000 cubic meters) in any one year; that the water shall be made available as requested at rates not exceeding 750 cubic feet (21.2 cubic meters) per second; that when the rates of flow requested and made available have been more than 500 cubic feet (14.2 cubic meters) per second the period of release shall not extend beyond fifteen consecutive days; and that at least thirty days must elapse between any two periods of release during which rates of flow in excess of

500 cubic feet (14.2 cubic meters) per second have been requested and made available. In addition to the guaranteed flow, Mexico shall release from El Azúcar reservoir and conduct through its canal system and the San Juan River, for use in the United States during periods of drought and after satisfying the needs of Mexican users, any excess water that does not in the opinion of the Mexican Section have to be stored and that may be needed for the irrigation of lands which were under irrigation during the year 1943 in the Lower Rio Grande Valley in the United States.

ARTICLE 27.

The provisions of Article 10, 11, and 15 of this Treaty shall not be applied during a period of five years from the date of the entry into force of this Treaty, or until the Davis dam and the major Mexican diversion structure on the Colorado River are placed in operation, should these works be placed in operation prior to the expiration of said period. In the meantime Mexico may construct and operate at its expense a temporary diversion structure in the bed of the Colorado River in territory of the United States for the purpose of diverting water into the Alamo Canal, provided that the plans for such structure and the construction and operation thereof shall be subject to the approval of the United States Section. During this period of time the United States will make available in the river at such diversion structure river flow not currently required in the United States, and the United States will cooperate with Mexico to the end that the latter may satisfy its irrigation requirements within the limits of those requirements for lands irrigated in Mexico from the Colorado River during the year 1943.

VII—Final Provisions.

ARTICLE 28.

This Treaty shall be ratified and the ratifications thereof shall be exchanged in Washington. It shall enter into force on the day of the exchange of ratifications and shall continue in force until terminated by another Treaty concluded for that purpose between the two Governments.

In witness whereof the respective Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate in the English and Spanish languages, in Washington on this third day of February, 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

CORDELL HULL [Seal]

GEORGE S. MESSERSMITH [Seal]

LAWRENCE M. LAWSON. [Seal]

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NAJERA [Seal]

RAFAEL FERNANDEZ MACGREGOR [Seal]

Protocol.

The Government of the United States of America and the Government of the United Mexican States agree and understand that:

Wherever, by virtue of the provisions of the Treaty between the United States of America and the United Mexican States, signed in Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, specific functions are imposed on, or exclusive jurisdiction is vested in, either of the Sections of the International Boundary and Water Commission, which involve the construction or use of works for storage or conveyance of water, flood control, stream gaging, or for any other purpose, which are situated wholly within the territory of the country of that Section, and which are to be used only partly for the performance of treaty provisions, such jurisdiction shall be exercised, and such functions, including the construction, operation and maintenance of the said works, shall be performed and carried out by the Federal agencies of that country which now or hereafter may be authorized by domestic law to construct, or to operate and maintain, such works. Such functions or jurisdictions shall be exercised in conformity with the provisions of the Treaty and in cooperation with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

The works to be constructed or used on or along the boundary, and those to be constructed or used exclusively for the discharge of treaty stipulations, shall be under the jurisdiction of the Commission or of the respective

Section, in accordance with the provisions of the Treaty. In carrying out the construction of such works the Sections of the Commission may utilize the services of public or private organizations in accordance with the laws of their respective countries.

This Protocol, which shall be regarded as an integral part of the aforementioned Treaty signed in Washington on February 3, 1944, shall be ratified and the ratifications thereof shall be exchanged in Washington. This Protocol shall be effective beginning with the day of the entry into force of the Treaty and shall continue effective so long as the Treaty remains in force.

In witness whereof the respective Plenipotentiaries have signed this Protocol and have hereunto affixed their seals.

Done in duplicate, in the English and Spanish languages, in Washington, this fourteenth day of November, 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

E. R. STETTINIUS, JR. [Seal]
Acting Secretary of State of the United States of America.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NAJERA [Seal]
Ambassador Extraordinary and Plenipotentiary of the United Mexican States in Washington.

AND WHEREAS the Senate of the United States of America by their Resolution of April 18, 1945, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said treaty and protocol, subject to certain understandings, the text of which Resolution is word for word as follows:

"*Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the ratification of Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol, signed at Washington on November 14, 1944, supplementary to the treaty, subject to the following understandings, and that these understandings will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will in effect form a part of the treaty:

"(a) That no commitment for works to be built by the United States in whole or in part at its expense, or for expenditures by the United States, other than those specifically provided for in the treaty, shall be made by the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, or any other officer or employee of the United States, without prior approval of the Congress of the United States. It is understood that the works to be built by the United States, in whole or in part at its ex-

pense, and the expenditures by the United States, which are specifically provided for in the treaty, are as follows:

"1. The joint construction of the three storage and flood-control dams on the Rio Grande below Fort Quitman, Texas, mentioned in article 5 of the treaty.

"2. The dams and other joint works required for the diversion of the flow of the Rio Grande mentioned in subparagraph II of article 5 of the treaty, it being understood that the commitment of the United States to make expenditures under this subparagraph is limited to its share of the cost of one dam and works appurtenant thereto.

"3. Stream-gaging stations which may be required under the provisions of section (j) of article 9 of the treaty and of subparagraph (d) of article 12 of the treaty.

"4. The Davis Dam and Reservoir mentioned in subparagraph (b) of article 12 of the treaty.

"5. The joint flood-control investigations, preparation of plans, and reports on the Rio Grande below Fort Quitman required by the provisions of article 6 of the treaty.

"6. The joint flood-control investigations, preparations of plans, and reports on the lower Colorado River between the Imperial Dam and the Gulf of California required by article 13 of the treaty.

"7. The joint investigations, preparation of plans, and reports on the establishment of hydroelectric plants at the international dams on the Rio Grande below Fort Quitman provided for by article 7 of the treaty.

"8. The studies, investigations, preparation of plans, recommendations, reports, and other matters dealing with the Tijuana River system provided for by the first para-

graph (including the numbered subparagraphs) of article 16 of the treaty.

"(b) Insofar as they affect persons and property in the territorial limits of the United States, the powers and functions of the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, and any other officer or employee of the United States, shall be subject to the statutory and constitutional controls and processes. Nothing contained in the treaty or protocol shall be construed as impairing the power of the Congress of the United States to define the terms of office of members of the United States Section of the International Boundary and Water Commission or to provide for their appointment by the President by and with the advice and consent of the Senate or otherwise.

"(c) That nothing contained in the treaty or protocol shall be construed as authorizing the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, or the United States Section of said Commission, directly or indirectly to alter or control the distribution of water to users within the territorial limits of any of the individual States.

"(d) That 'international dam or reservoir' means a dam or reservoir built across the common boundary between the two countries.

"(e) That the words 'international plants', appearing in article 19, mean only hydroelectric generating plants in connection with dams built across the common boundary between the two countries.

"(f) That the words 'electric current', appearing in article 19, mean hydroelectric power generated at an international plant.

"(g) That by the use of the words 'The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary * * *' in the first sentence of the fifth paragraph of article 2, is meant: 'The jurisdiction of the Commission shall extend and be limited to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary * * *.'

"(h) The word 'agreements' whenever used in subparagraphs (a), (c), and (d) of article 24 of the treaty shall refer only to agreements entered into pursuant to and subject to the provisions and limitations of treaties in force between the United States of America and the United Mexican States.

"(i) The word 'disputes' in the second paragraph of article 2 shall have reference only to disputes between the Governments of the United States of America and the United Mexican States.

"(j) First, that the one million seven hundred thousand acre-feet specified in subparagraph (b) of article 10 includes and is not in addition to the one million five hundred thousand acre-feet, the delivery of which to Mexico is guaranteed in subparagraph (a) of article 10; second, that the one million five hundred thousand acre-feet specified in three places in said subparagraph (b) is identical with the one million five hundred thousand

acre-feet specified in said subparagraph (a); third, that any use by Mexico under said subparagraph (b) of quantities of water arriving at the Mexican points of diversion in excess of said one million five hundred thousand acre-feet shall not give rise to any future claim of right by Mexico in excess of said guaranteed quantity of one million five hundred thousand acre-feet of water.

"(k) The United States recognizes a duty to require that the protective structures to be constructed under article 12, paragraph (a), of this treaty, are so constructed, operated, and maintained as to adequately prevent damage to property and lands within the United States from the construction and operation of the diversion structure referred to in said paragraph."

AND WHEREAS the said treaty and protocol were duly ratified by the President of the United States of America on November 1, 1945, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid understandings on the part of the United States of America;

AND WHEREAS the said treaty and protocol were duly ratified by the President of the United Mexican States on October 16, 1945, in pursuance and according to the terms of a Decree of September 27, 1945 of the Senate of the United Mexican States approving the said treaty and protocol and approving the said understandings on the part of the United States of America in all that refers to the rights and obligations between the parties;

AND WHEREAS it is provided in Article 28 of the said treaty that the treaty shall enter into force on the day of the exchange of ratifications;

AND WHEREAS it is provided in the said protocol that the protocol shall be regarded as an integral part of the said treaty and shall be effective beginning with the day of the entry into force of the said treaty;

AND WHEREAS the respective instruments of ratification of the said treaty and protocol were duly exchanged, and a protocol of exchange of instruments of ratification was signed in the English and Spanish languages, by the respective Plenipotentiaries of the United States of America and the United Mexican States, on November 8, 1945, the English text of which protocol of exchange of instruments of ratification reads in part as follows:

"The ratification by the Government of the United States of America of the treaty and protocol aforesaid recites in their entirety the understandings contained in the resolution of April 18, 1945 of the Senate of the United States of America advising and consenting to ratification, the text of which resolution was communicated by the Government of the United States of America to the Government of the United Mexican States. The ratification by the Government of the United Mexican States of the treaty and protocol aforesaid is effected, in the terms of its instrument of ratification, in conformity to the Decree of September 27, 1945 of the Senate of the United Mexican States approving the treaty and protocol aforesaid and approving also the aforesaid understandings on the part of the United States of America in all that refers to the rights and obligations between both parties, and in which the Mexican Senate refrains from considering, because it is not competent to pass judgment upon them, the provisions which relate exclusively to the internal application of the treaty within the United States of

America and by its own authorities, and which are included in the understandings set forth under the letter (a) in its first part to the period preceding the words 'It is understood' and under the letters (b) and (c)."

NOW, THEREFORE, be it known that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the said treaty and the said protocol supplementary thereto, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith, on and from the eighth day of November, one thousand nine hundred forty-five, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-seventh day of November in the year of our Lord one thousand
[Seal] nine hundred forty-five, and of the Independence of the United States of America the one hundred seventieth.

HARRY S. TRUMAN

By the President:
James F. Byrnes
Secretary of State

APPENDIX No. 30.

Upper Colorado River Basin Compact.

Act of April 7, 1949
63 Stat. 31

(TEXT)

Approved by Congress

ENTERED INTO BY THE STATES OF ARIZONA, COLORADO, NEW MEXICO, UTAH, WYOMING.

Santa Fe, New Mexico, October 11, 1948.

UPPER COLORADO RIVER BASIN COMPACT.

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,
Clifford H. Stone for the State of Colorado,
Fred E. Wilson for the State of New Mexico,
Edward H. Watson for the State of Utah and
L. C. Bishop for the State of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

ARTICLE I.

(a) The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II.

As used in this Compact:

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System below Lee Ferry.

(h) The term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the President of the United States of America, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the administrative agency created by Article VIII of this Compact.

(k) The term "water year" means that period of twelve months ending September 30 of each year.

(l) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

(m) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

ARTICLE III.

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this Compact, there is hereby apportioned from the Upper Colorado River System in perpetuity to the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(1) To the State of Arizona the consumptive use of 50,000 acre-feet of water per annum.

(2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by Upper Basin under the Colorado River Compact and remaining after the deduction of the use, not to

exceed 50,000 acre-feet per annum, made in the State of Arizona.

State of Colorado	51.75 per cent.
State of New Mexico	11.25 per cent.
State of Utah	23.00 per cent.
State of Wyoming	14.00 per cent

(b) The apportionment made to the respective States by paragraph (a) of this Article is based upon, and shall be applied in conformity with, the following principles and each of them:

(1) The apportionment is of any and all man-made depletions;

(2) Beneficial use is the basis, the measure and the limit of the right to use;

(3) No State shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another signatory State of its apportioned use during that water year; provided, that this subparagraph (b)(3) shall not be construed as:

(i) Altering the apportionment of use, or obligations to make deliveries as provided in Article XI, XII, XIII or XIV of this Compact;

(ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or

(iii) Countenancing average uses by any signatory State in excess of its apportionment.

(4) The apportionment to each State includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact.

(d) The apportionment made by this Article shall not be taken as any basis for the allocation among the signatory States of any benefits resulting from the generation of power.

ARTICLE IV.

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

(a) The extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

(b) If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry a quantity of water equal

to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(c) Except as provided in subparagraph (b) of this Article, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

ARTICLE V.

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this Compact shall be charged to the State in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the State in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this Compact shall be charged as follows:

(1) If the Commission finds that the reservoir is used, in whole or in part, to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir, or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b)(1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case

may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b)(2) shall be earmarked for and charged to the State in which the water will be used.

(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State, provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact.

ARTICLE VI.

The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof; for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination.

ARTICLE VII.

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use

is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State.

ARTICLE VIII.

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission." The Commission shall be composed of one Commissioner representing each of the States of the Upper Division, namely, the States of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such State and, if designated by the President, one Commissioner representing the United States of America. The President is hereby requested to designate a Commissioner. If so designated the Commissioner representing the United States of America shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact, and which are not paid by the United States of America, shall be borne by the four States according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount payable by each State. Each State shall pay the amount due by

it to the Commission on or before April 1 of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States; however, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, or an employee of any signatory State or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission, so far as consistent with this Compact, shall have to power to:

(1) Adopt rules and regulations;

(2) Locate, establish, construct, abandon, operate and maintain water gaging stations;

(3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;

(4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;

(5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions

and use of the waters of the Colorado River, and any of its tributaries;

(6) Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each State thereof;

(7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;

(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division

III of such treaty may be reduced in accordance with the terms of such Treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.

(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute *prima facie* evidence of the facts found.

(h) The organization meeting of the Commission shall be held within four months from the effective date of this Compact.

ARTICLE IX.

(a) No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users, in a State in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact.

(b) Any signatory State, any person or any entity of any signatory State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this Compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State,

or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another signatory State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by findings of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which

such works are located, each and every year during which such rights are enjoyed, for such purposes; a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the State, and in lieu of any and all taxes on said property, improvements and rights. The signatory States recommend to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or its water users, provision be made for like payment, in reimbursement of loss of taxes.

ARTICLE X.

(a) The signatory States recognize La Plata River Compact entered into between the States of Colorado and New Mexico, dated November 27, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XI.

Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the States of Colorado and Wyoming in such quantities as shall

result from the application of the following principles and procedures:

(a) *Water used under rights existing prior to the signing of this Compact.*

(1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any downstream points.

(2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective States.

(b) *Water used under rights initiated subsequent to the signing of this Compact.*

(1) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the States.

(2) The storage of water by projects located in either State, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both States.

(c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The States of Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact.

(e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the States of Colorado and Wyoming on the Commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the Basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.

(g) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XII.

Subject to the provisions of this Compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in the State of Utah and flowing into the State of Wyoming and thence into the Green River in the State of Utah; Beaver Creek, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Burnt Fork, a tributary of Henry's Fork, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Birch Creek, a tributary of Henry's Fork originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; and Sheep Creek, a tributary of Green River in the State of Utah, and their tributaries, are hereby apportioned between the States of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) *Waters used under rights existing prior to the signing of this Compact.*

Waters diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the States affected and approved by the Commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Waters used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this Compact shall be divided fifty percent to the State of Wyoming and

fifty percent to the State of Utah and each State may use said waters as and where it deems advisable.

(c) The State of Wyoming assents to the exclusive use by the State of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the State of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the State of Utah.

(d) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the States of Utah and Wyoming on the Commission, it is otherwise provided.

(e) All consumptive use of waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

(f) The States of Utah and Wyoming each assent to the diversion and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact. It shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. If either the State of Utah or the State of Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the

capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(g) In order to measure the flow of water diverted, each State shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(h) The State Engineers of the two States jointly shall appoint a Special Water Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article. The salary and expenses of such Special Water Commissioner shall be paid thirty percent by the State of Utah and seventy percent by the State of Wyoming.

ARTICLE XIII.

Subject to the provisions of this Compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the State of Colorado, are hereby apportioned between the States of Colorado and Utah in accordance with the following principles:

(a) The State of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this Compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the State of Utah, then the gross amount of all such diversions for use in the State of Utah, less any returns from such diversions to the River above

Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XIV.

Subject to the provisions of this Compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the States of Colorado and New Mexico as follows:

The State of Colorado agrees to deliver to the State of New Mexico from the San Juan River and its tributaries which rise in the State of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan Basin in the State of New Mexico, to enable the State of New Mexico to make full use of the water apportioned to the State of New Mexico by Article III of this Compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either State at the time of the signing of this Compact; and

(2) All uses of water contemplated by projects authorized, at the time of the signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The State of Colorado assents to diversions and storage of water in the State of Colorado for use in the State of New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of the waters of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each State will bear the same proportionate relation to the consumptive use made in each State during times of average water supply as determined by the Commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either State in order to make deliveries at Lee Ferry as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provision of this Article.

(e) All consumptive use of the waters of the San Juan River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XV.

(a) Subject to the provisions of the Colorado River Compact and of this Compact, water of the Upper Colo-

rado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact.

ARTICLE XVI.

The failure of any State to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XVII.

The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any State under the apportionment of consumptive use made by this Compact.

ARTICLE XVIII.

(a) The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

(b) The State of New Mexico and the State of Utah reserve their respective rights and interests under the Colorado River Compact as States of the Lower Basin.

ARTICLE XIX.

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE XX.

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

Article XXI.

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, the Commissioners, have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States of America, and one of which shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, State of New Mexico, this 11th day of October, 1948.

(Signed) CHARLES A. CARSON
Charles A. Carson
Commissioner for the State of Arizona

(Signed) CLIFFORD H. STONE
Clifford H. Stone
Commissioner for the State of Colorado

(Signed) FRED E. WILSON
Fred E. Wilson
Commissioner for the State of New Mexico

(Signed) EDWARD H. WATSON
Edward H. Watson
Commissioner for the State of Utah

(Signed) L. C. BISHOP
L. C. Bishop
Commissioner for the State of Wyoming

(Signed) GROVER A. GILES
Grover A. Giles, Secretary

Approved:

(Signed) HARRY W. BASHORE
Harry W. Bashore
Representative of the United States of America

APPENDIX No. 31.

THE UPPER COLORADO RIVER BASIN COMPACT:

Joint Statement of the Negotiators.

Reprinted in Hearings, Subcommittee on Irrigation Reclamation of the Committee on Public Lands, House of Representatives (81st Cong., 1st Sess., p. 56) on H. R. 2325, etc. The Upper Colorado River Basin Compact.

(Signatures appearing on original letter are included.)

March 16, 1949

Hon. Clair Engle,
House of Representatives.

My dear Mr. Engle:

Your letter of March 12, 1949, addressed to Honorable Harry W. Bashore, Representative of the United States, Upper Colorado River Basin Compact Negotiations, has been given consideration by Mr. Bashore and by the representatives of the Upper Basin States now assembled in Washington. The answers herein given to your specific question are the answers of the representatives of the compacting States and of Mr. Bashore.

In this letter the statements made by you in connection with each question and the questions themselves will be underlined.* The answer will follow each question.

*Underscoring in italics.

QUESTION No. 1.

Article I of the proposed Compact refers to the apportionment of the "use" of the water of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact.

(a) *Is the word "use" to be taken as synonymous with the phrase "beneficial consumptive use" as it occurs in the Colorado River Compact?*

ANSWER: The word "use" as it occurs in Article I of the Upper Colorado River Basin Compact is synonymous with the phrase "beneficial consumptive use" as it appears in Article III(a) and Article III(b) of the Colorado River Compact.

(b) *In this connection, note that the phrase "consumptive use" occurs frequently in the pending Compact. Is there any difference in meaning between the phrase "consumptive use" as used in the pending Compact, and "beneficial consumptive use" as the phrase is used in the Colorado River Compact?*

ANSWER: In all instances where the phrase "consumptive use" occurs with reference to the apportionment made to the Upper Basin by the Colorado River Compact, such phrase is synonymous with the phrase "beneficial consumptive use" as it occurs in Article III(a) and Article III(b) of the Colorado River Compact. This is because of the paramountcy of the Colorado River Compact. When such phrase is employed in connection with internal matters relating to the rights of the Upper Basin States as among themselves to the water available to them under the Colorado River Compact, the phrase "consumptive

use" is not necessarily synonymous with the phrase "beneficial consumptive use" as used in the Colorado River Compact. In this connection it should be pointed out that in each of the compacting States a "beneficial use" is essential to the acquisition of a firm water right. Also attention is directed to Article III(b)(2) of the Upper Basin Compact which provides that "beneficial use is the basis, the measure and the limit of the right to use."

QUESTION No. 2.

In Article II, the term "virgin flow" is defined to mean "the flow of any stream undepleted by the activities of man."

(a) *Is it proposed to determine "virgin flow" with respect to each year, or to use averages?*

ANSWER: "Virgin flow" will be determined with respect to each water year. In the actual administration of the Upper Colorado River Basin Compact, the Upper Colorado River Commission may make use of averages and necessarily will do so when hold-over reservoirs are constructed and placed in operation.

(b) *If on an annual basis, how will "virgin flow" for any particular future water year be determined?*

ANSWER: An index of the virgin inflow will be determined by the summation of the discharge measured at a series of key gaging stations located around the rim of the Basin above the major development, the recorded discharge past each station to be corrected for man-made depletions, if any, above that station. The virgin outflow at Lee Ferry will be

determined by a correlation curve developed by the historic relationship between recorded inflow at such key gaging stations, corrected for upstream man-made depletions, if any, and recorded Lee Ferry flows, together with the historic man-made depletions above Lee Ferry.

QUESTION NO. 3.

(a) *Will consumptive uses in each of the States, under Article III, be determined with reference to each water year?*

ANSWER: Consumptive uses in each of the Upper Basin States will be determined with reference to each water year. In making an administrative determination of such consumptive uses the Upper Colorado River Commission will necessarily make use of averages when holdover reservoirs are constructed and placed in operation. While the Compact leaves such determination to the Commission, it is considered that the Commission may make use of 10-year progressive averages.

(b) *Or, are these quantities to be determined on long or short term averages?*

ANSWER: See answer to Question No. 3(a) above.

QUESTION NO. 4.

Article IV speaks of curtailment of use of water in order that flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact.

Does the word "use" mean the same thing as the phrase "consumptive use" as determined pursuant to Article VI of the Compact?

ANSWER: The word "use" as it so occurs includes "consumptive use" as such use is determined pursuant to Article VI. "Use" is a broader term than "consumptive use." It is employed in Article IV in order that there may be no argument as to the power and obligation of an Upper Division State to curtail any "use" which it determines should be curtailed in order to assure full compliance with Article III(d) of the Colorado River Compact.

QUESTION No. 5.

Article V, subsection (c), provides that: "In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference."

Does this mean that the Commission may exonerate any reservoir or reservoir capacity from the obligation of Article III(d) of the Colorado River Compact: If not, what is meant by the "preference" for consumptive use?

ANSWER: The answer to the first part of this double question is: No. The States and not the Commission determine what uses must be curtailed in order to comply with the obligation of Article III. (d) of the Colorado River Compact. By "preference" is meant that each Upper Division State has a superior right to use a storage site for consumptive uses within that State and it may not be deprived of that right by the desire of other Upper Division States to utilize the same site for the impoundment of water which will be released to meet the Lee Ferry delivery obligations of the Upper Division States. The exer-

cise of such a preference right must not violate or have the effect of violating the delivery obligation imposed by Article III(d) of the Colorado River Compact.

QUESTION No. 6.

Article VI provides that the Commission shall determine the quantity of the consumptive use of water for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination.

(a) *Outflow from the Upper Basin apparently would be measured at Lee Ferry. Where and how would inflow to the Upper Basin be measured?*

ANSWER: Inflow to the Upper Basin will be determined by a series of key gaging stations located at strategic points and designed to be an index of the inflow to the Upper Basin. The recorded discharge past these key gaging stations will be corrected for all man-made depletions, if any, occurring above each station.

(b) *It is my understanding that a large part of the use of water in the Upper Basin will be made possible by over-year and cyclic storage. The impounding of water in storage reservoirs would be reflected by depletion at Lee Ferry during the water year in which water is impounded. Does Article VI mean that consumptive use will be measured by water stored, as distinguished from the withdrawals from storage and application to use on land?*

ANSWER: The measurement of use by the inflow-outflows method prescribed by Article VI automatically takes into account the storage and release of water from reservoirs. Hence the measurement, in terms of stream depletion at Lee Ferry, is by water stored as distinguished from withdrawals from storage and applications to use on land.

(c) How is it proposed to account for water stored in one year and applied to use in another and later year? Specifically, would consumptive use be considered as occurring in the year in which water is impounded, or in some later year when it is withdrawn from storage and applied to use?

ANSWER: The necessity for hold-over storage to enable the Upper Basin to utilize the apportionment made to it by the Colorado River Compact and at the same time to comply with the obligation for Lee Ferry deliveries imposed by Article III(d) of the Colorado River Compact, requires that consumptive use resulting from the storage of water in reservoir be determined on the basis of progressive averages. While the Compact leaves such determination to the Commission, it is considered that the Commission may make use of progressive averages.

QUESTION No. 7.

Article VIII provides for an "Upper Colorado River Commission." Among other things, the Commission is authorized to (Article VIII(d)):

"(6) *Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and each State thereof.*

"(7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

"(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof."

Subdivision (g) of the same article provides that:

"Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal but shall constitute prima facie evidence of the facts found."

It has been held that, in addition to its contractual character, under some circumstances a compact approved by the Congress is a public law (Missouri v. Illinois, 200 U. S. 496-519; Pennsylvania v. Wheeling, etc., 54 U. S. 518-566). Is it intended that subdivision (g) above shall be binding on any State not a party to the Upper Colorado River Basin Compact, or on the United States?

ANSWER: Article VIII(g) of the Upper Colorado River Basin Compact does not bind any State which is not signatory to that Compact and does not bind the United States.

QUESTION No. 8.

Will the ratification by the several States and the approval by the Congress, of the Upper Colorado River Basin Compact in any way amend or affect the meaning of the Colorado River Compact, whatever that document may mean?

ANSWER: The Upper Colorado River Basin Compact is an inter-state compact between the States of Arizona, Colorado, New Mexico, Utah, and Wyoming. Article I, section 10, of the Constitution of

the United States requires that before a compact or agreement between states is effective the Congress of the United States must consent thereto. The purpose of H. R. 2325 is to give such Congressional consent to the Upper Colorado River Basin Compact. H. R. 2325 does not, nor does the Upper Colorado River Basin Compact, alter, amend, modify, or repeal the Boulder Canyon Project Act (45 Stat. 1057) or the Colorado River Compact signed at Santa Fe, New Mexico, on November 24, 1922. It is recognized that the Upper Colorado River Basin Compact is binding only upon the states which are signatory thereto and does not impair any rights of any State not signatory thereto, and that the Upper Colorado River Basin Compact is subject, in all respects, to the provisions and limitations contained in the Colorado River Compact.

QUESTION No. 9.

I note that in Article XVIII the States of Arizona, New Mexico and Utah have reserved their respective rights and interests under the Colorado River Compact, as States of the Lower Basin. Will the ratification and approval by the Congress of the Upper Colorado River Basin Compact impair or in any way affect the rights of States of the Lower Basin not signatory thereto?

ANSWER: All that is sought by H. R. 2325 is the consent of the Congress to the Upper Colorado River Basin Compact so that the limitation imposed by Article I, Section 10, of the United States Constitution upon the power of any state to "enter into any Agreement or Compact with another state" may be

removed. The Lower Basin rights of Arizona, New Mexico, and Utah were reserved in order to avoid any questions that might arise if they were not specifically reserved. No implication can be drawn from this reservation with respect to the rights of states not parties to the Compact. They are not bound and their legal rights are not and cannot be impaired by a document to which they are not parties.

Sincerely yours,

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APPENDIX No. 32.

EXTRACT FROM REPORT OF COMMITTEE ON PUBLIC LANDS, HOUSE OF REPRESENTATIVES.

(81st Cong., 1st Sess.) Report No. 270 on H. R. 2325 an Act Granting the Consent of the United States to the Upper Colorado River Basin Compact, Act of April 7, 1949, 63 Stat. 31.

The purpose of H. R. 2325 (S. 790) is to give such congressional consent to the Upper Colorado River Basin Compact. H. R. 2325 (S. 790) does not, nor does the Upper Colorado River Basin Compact, alter, amend, modify, or repeal the Boulder Canyon Project Act (45 Stat. 1057) or the Colorado River Compact signed at Santa Fe, N. Mex., on November 24, 1922. It is recognized that the Upper Colorado River Basin Compact is binding only upon the States which are signatory thereto and does not impair any rights of any State not signatory thereto, and that the Upper Colorado River Basin Compact is subject, in all respects, to the provisions and limitations contained in the Colorado River Compact. It is further recognized that Congress, by giving its consent to the Upper Colorado River Basin Compact, does not commit the United States to any interpretation of the Colorado River Compact expressed in, or implied from, the Upper Colorado River Basin Compact and expresses neither agreement nor disagreement with any such interpretation.

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IN THE

Supreme Court of the United States

October Term, 1954

No. 10 Original

STATE OF ARIZONA, Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, Defendants.

UNITED STATES OF AMERICA, Intervenor,

STATE OF NEVADA, Intervenor.

BRIEF OF THE STATE OF COLORADO AND THE STATE OF WYOMING OPPOSING THE MOTION OF THE STATE OF CALIFORNIA TO JOIN THE STATES OF COLORADO AND WYOMING AS PARTIES TO THIS ACTION

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STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, Defendants.

UNITED STATES OF AMERICA, Intervenor,
STATE OF NEVADA, Intervenor.

BRIEF OF THE STATE OF COLORADO AND THE STATE OF WYOMING OPPOSING THE MOTION OF THE STATE OF CALIFORNIA TO JOIN THE STATES OF COLORADO AND WYOMING AS PARTIES TO THIS ACTION.

Because their interests in this matter are identical, the States of Colorado and Wyoming join in this brief. For convenience of reference, they will be referred to herein as "Respondents."

STATEMENT OF THE QUESTIONS PRESENTED

California, by her motion, seeks to make respondents parties to this action. The motion presents four questions for determination, only three of which are applicable to

respondents. The remaining question is directed to the interests of the States of Utah and New Mexico as Lower Basin States, and is applicable only to the States of Utah and New Mexico. The three questions presented and applicable to respondents are:

1. Are the rights and obligations of respondents under the Colorado River Compact in issue in this action, and if so, is there a justiciable controversy existing upon which respondents' rights and obligations thereunder can be adjudicated?
(See paragraph I, page 2, California's motion).

2. Are the respondents parties in interest in the Boulder Canyon Project Act and the California Self-Limitation Act, and if so, is there a justiciable controversy existing upon which respondents' interests therein may be adjudicated?
(See paragraph III, pages 3 and 4, California's motion).

3. Is there a justiciable controversy existing between the respondents and the United States, requiring determination in this action?
(See paragraph IV, page 4, California's motion).

STATEMENT OF THE CASE

I. PURPOSE OF PRESENT ACTION.

The present action was brought to divide, between the States in the Lower Basin, the water use to which the Lower Basin of the River is entitled under the Colorado River Compact.

THE COLORADO RIVER COMPACT DOES NOT AND WAS NOT INTENDED TO DIVIDE THE WATER USE OF EITHER THE UPPER BASIN OR THE LOWER BASIN BETWEEN THE STATES WITHIN EITHER BASIN.

The division of water use between the States of a basin is a matter outside the scope of the compact. This

principle has been recognized by all seven of the Colorado River States and the United States.

The Colorado River Compact divides water use only between two areas, designated as the Upper Basin and Lower Basin.

Respondents are located in the Upper Basin.

California and Nevada are located solely in the Lower Basin, and Arizona, although having a small area located in the Upper Basin, is located principally in the Lower Basin.

Respondents have no rights in the water use allotted to the Lower Basin by the Compact.

The States in the Upper Basin, including respondents, by agreement, have divided the water use allotted to the Upper Basin between the States in the Upper Basin.

Unlike the Upper Basin, the Lower Basin States have been unable to agree upon a division of the water use allotted to the Lower Basin by the Compact.

Consequently, this action was commenced by Arizona against California to accomplish a division of the water use in the Lower Basin by judicial decision. Nevada intervened to have adjudicated her rights to the use of water allotted to the Lower Basin by the Compact. The United States intervened to protect its rights and those of its instrumentalities and wards to the use of waters in the Lower Basin.

Arizona seeks no relief as against the Upper Basin or respondents.

Nevada seeks no relief as against the Upper Basin or respondents.

The United States seeks no relief as against the Upper Basin or respondents.

Neither Arizona, Nevada, nor the United States has asserted that the respondents are necessary or indispens-

able parties to a determination of this action.

Of the present parties to this action, California, and California alone, asserts that respondents are necessary or indispensable parties to this action.

II. PURPOSE OF CALIFORNIA'S MOTION

California, by her motion to make respondents parties, seeks to expand the action beyond its original purpose of dividing water use in the Lower Basin, to one including the adjudication of interbasin rights and obligations, including the rights and obligations of the respondents and the other Upper Basin States under the Compact; and also to adjudicate the respective rights of respondents and the United States to the use of waters of the Colorado River.

III. MOTION DOES NOT ALLEGE EXISTENCE OF JUSTICIABLE CONTROVERSY

California, by her motion, alleges three reasons why respondents are necessary or indispensable parties.

1. That there are in controversy in the present action many issues or interpretation of the Compact, and that these issues of interpretation affect the rights and obligations of respondents.
   (See paragraph I, page 2, California's motion).

2. That the meaning and effect of the Boulder Canyon Project Act and the California Self-Limitation Act are in controversy in this action, and that the issues of interpretation affect the rights and obligations of respondents.
   (See paragraph III, pages 3 and 4, California's motion).

3. That the claims of the United States in this action affect the rights and obligations of respondents.
   (See paragraph IV, page 4, California's motion).

There is no allegation in the motion that respondents, by any acts or ommissions, are depriving California or any other party to this action, of any rights claimed under the Compact or otherwise; there is no allegation that respondents are violating the Colorado River Compact, the Boulder Canyon Project Act, or the California Self-Limitation Act.

California's motion, and brief in support thereof, are premised on the assumption that at some time in the future a fact situation *may* arise, which *may* create a controversy, which *may* require the interpretation of interbasin rights and the rights and obligations of respondents.

IV. PURPOSE AND BACKGROUND OF COLORADO RIVER COMPACT

To understand the position of respondents, a brief resume of the background and purposes of the Colorado River Compact is necessary.

The Colorado River rises in the State of Colorado and flows through western Colorado and thence into Utah and enters Arizona near its northeast corner. For approximately 145 miles it forms the boundary between Arizona and Nevada, for 235 miles it forms the boundary between Arizona and California, and for 16 miles the boundary between Arizona and Mexico. Its drainage basin encompasses portions of the seven States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona and California.

The source of most of the waters of the river is in the Upper Basin of the River, located principally in Colorado, Wyoming, Utah and New Mexico.

The river, in its natural state, has great fluctations in flow, not only in the same year, varying with the seasons, but from year to year.

Before construction of Hoover Dam, which impounds water in Lake Mead, floods caused great damage, particularly in the Lower Basin of the river. Prior to the negotia-

tion of the Colorado River Compact in 1922, there was a demand in the Lower Basin of the river, and particularly in Southern California, for the construction of a large storage reservoir in the Lower Basin of the river for flood control and to accumulate waters during high flows of the river for use during low flows, to provide a firm water supply for power production, irrigation and other uses.

At the same time, Southern California desired the construction of an All-American Canal to serve the Imperial Valley, to replace the canal then serving the Valley, which was located in part in Mexico.

To accomplish these purposes, California urged Congress to construct a large storage reservoir on the river in the Lower Basin and to build the All-American Canal.

The States in the Upper Basin of the river, realizing that with the construction of these projects, development of the use of waters of the river in the Lower Basin would increase more rapidly than in the Upper Basin, insisted that the Upper States be given some protection. The Upper States feared that prior large scale development of the use of the waters in the Lower Basin, would give rise to a claim that later use in the Upper Basin could not interfere with an existing economic development in the Lower Basin, based on the prior use in that Basin.

As a result of this situation, the Colorado River Compact was negotiated (H. Doc. 717, 80th Congress, 2d Sess., p. A17, 1948). The full text of the Compact is set forth at pages 1-8 of the Appendixes filed herein by California in connection with her answer. Its fundamental underlying premise is to protect the Upper States in their future development and use of the waters of the river, while at the same time permitting the Lower States to proceed with immediate development and use. Thus, the first major purpose of the Compact, as stated in Article I of the Compact, is "to provide for the equitable division and apportionment of the use of the waters of the Colorado River system."

By the Compact, the river basin was divided into two basins, denominated the Upper Basin and the Lower Basin, with the division point at Lee Ferry, a point on the river just South of the Utah-Arizona border. The principal protection to the Upper Basin is found in Article III(a), which provides:

> "There is hereby apportioned from the Colorado River system *in perpetuity* to the Upper Basin and to the Lower Basin respectively, the exlusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist." (Emphasis ours).

We call the Court's attention to the fact that the foregoing apportionment *does not apportion or divide the water use between the individual states* of either basin, but only as between the Upper and Lower Basins of the river.

The Upper Basin contains those areas from which waters naturally drain into the Colorado River system above Lee Ferry, plus areas of the Upper Basin States located without the drainage area but which shall be served by waters diverted above Lee Ferry. The Lower Basin is the area from which waters naturally drain into the Colorado River system below Lee Ferry, plus the parts of the Lower Basin States without the drainage area which shall be served by waters diverted below Lee Ferry. (Article II(f) and (g) Compact).

Colorado and Wyoming are located solely within the Upper Basin. California and Nevada are located solely within the Lower Basin. New Mexico and Utah are located in part in the Upper Basin and in part in the Lower Basin, but their prinicipal interests are in the Upper Basin. Arizona is located in part within the Upper Basin and in part within the Lower Basin, but her principal interests are in the Lower Basin. (Articles II (f) and (g) Compact).

Recognizing these interests, the Compact divides the States into two political groups, termed States of the Upper Division, which includes Colorado, New Mexico, Utah and Wyoming, and States of the Lower Division, which includes Arizona, California and Nevada. (Article II (e) and (d) Compact).

After the Compact was negotiated and it became effective, Hoover Dam was authorized and constructed. The All-American Canal was authorized and constructed. The Lower Basin obtained the facilities of flood control, storage and the All-American Canal which it desired, and did proceed with its immediate development and use of the waters in the Lower Basin. In addition, to aid water use and development in the Lower Basin, Parker Dam, Davis Dam and other water storage and use facilities have been constructed in the Lower Basin.

As was anticipated, the development and use of the waters of the river in the Upper Basin has been far less rapid than in the Lower Basin.

The present beneficial consumptive use in the Upper Basin is but about one-third of its apportionment under Article III (a) of the Compact, being approximately 2,500,000 acre feet of the 7,500,000 acre feet apportioned (see Hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress, Second Session, on S. 1555, page 286). The unused portion of the Upper Basin apportionment is flowing into the Lower Basin and will continue so to flow until Upper Basin use increases to the amount of its apportioned share.

SUMMARY OF ARGUMENT

I. As to the questions of interpretation of the Compact raised by the motion, respondents contend:

A. The present action is one to divide water use in the Lower Basin. The Compact does not and was not intended to divide water use within a basin. The division of water use within a basin is outside the scope of the Compact. Consequently, this is not an action on or to enforce the Compact, but rather to determine an issue outside the scope of the Compact. The fact that respondents are parties to the Compact does not require their presence to determine the present issue, which is not within the scope of the Compact.

B. There is no justiciable controversy existing between respondents and California, or any other party to this action, requiring or permitting the interpretation of or adjudication of respondents' rights and obligations under the Compact. Respondents' rights and obligations under the Compact cannot be interpreted or adjudicated in the absence of an existing justiciable controversy. There is no allegation or assertion that respondents are violating the Compact or depriving California, or the Lower Basin, or any of the parties to this action, of any rights which they claim under the Compact. Respondents are not required to submit to an adjudication of their rights and obligations under the Compact in the absence of an existing justiciable controversy, and upon assumed or hypothetical facts.

II. As to the questions of interpretation of the Boulder Canyon Project Act and the California Self-Limitation Act, respondents contend:

A. The present controversy involving the Boulder Canyon Project Act and the California Self-Limitation Act relates solely to a dispute between Arizona and California, over the division of water use in the Lower Basin. Respondents have no rights in the water use to which the

Lower Basin is entitled under the Compact. Respondents have no rights or obligations involved in this controversy, and are not necessary parties to any controversy concerning these Acts.

B. The rights and obligations of respondents, if any, under the Boulder Canyon Project Act and the California Self-Limitation Act cannot be adjudicated until such time as there is a justiciable controversy existing between the respondents and some Lower Basin State, requiring such adjudication. There is no allegation in the motion that respondents are depriving California, or any other party to this action, of any rights which they claim under these Acts. There being no allegation of the existence of a justiciable controversy, respondents cannot be required to submit to an adjudication of their rights or obligations.

III. As to the claims of the United States in this action, respondents contend:

A. The United States has made no claims against and seeks no relief in this action against respondents. In the absence of such claims by the United States against respondents, there is no issue between the United States and the respondents to be determined in this action, and to which the respondents are necessary parties.

B. There is no allegation of the existence of any justiciable controversy between the respondents and the United States. Neither California nor the United States allege that the respondents are depriving the United States of any rights which it claims. The fact, if it be a fact, that at some time in the future, under some circumstances, a justiciable controversy may arise between the respondents and the United States, is not a valid ground for the requirement of the presence of respondents to the present action.

ARGUMENT

I. THE ISSUE IN CONTROVERSY IN THE PRESENT ACTION IS THE DIVISION OF WATER USE IN THE LOWER BASIN, TO WHICH RESPONDENTS ARE NOT NECESSARY OR INDISPENSABLE PARTIES.

That the issue in this action is the division of water use in the Lower Basin is clearly apparent.

Arizona, by her complaint, prays for a share of the water use "apportioned to the Lower Basin by the Colorado River Compact," subject to "the availability of such water under the Colorado River Compact." (See page 30, Arizona's complaint).

Nevada, in her petition for intervention, prays for an adjudication of her share of the water use apportioned to the Lower Basin by the Compact. (See page 25 of Nevada's petition for intervention).

California, in her answer to Arizon's complaint, asks for no affirmative relief, but alleges by way of affirmative defenses that her claims to the beneficial consumptive use of water in the Lower Basin are superior to those of Arizona, and at page 2 of her answer states:

> "This controversy centers on the desire of Arizona to secure a right to the use of water for the Central Arizona Project, which has not been authorized by the Congress. She seeks to obtain water for that project by taking it from the existing and operating California projects."

It is equally clear that the Colorado River Compact does not, and was not intended to divide the water use of either the Upper or Lower Basins.

The Colorado River Compact Commission, which negotiated the Compact, deliberately avoided any attempt to allocate waters between the States.

"During the public hearings and business meetings of the Commission, it became apparent that any attempt to allocate waters individually to the several states would be a protracting and probably unsuccessful undertaking. Participants have stated that the negotiations would have broken up but for Mr. Hoover's proposal that the Commission limit its efforts to a division of water between the Upper Basin and the Lower Basin, leaving to each basin the future internal allocation of its share."

(The Hoover Dam Documents, Second Edition, 1948, published under H. R. 391 of December 4, 1947, page 22).

"The Colorado River Compact does not attempt to divide the water of the river between individual states."

(The Hoover Dam Documents, supra, page A50).

The Upper Basin States have, by Compact, agreed upon a division between themselves of the water use allotted to the Upper Basin by the Colorado River Compact. This agreement is the Upper Colorado River Basin Compact, which was negotiated by the Upper Basin States with the consent of Congress. (See 63 Stat. 31, Appendix 30, Article VII).

Since the Lower Basin States have been unable to agree upon a division of the water uses in the Lower Basin, several attempts have been made to determine the division by litigation. (See *Arizona vs. California*, 283 U. S. 423, 51 S. Ct. 522; *Arizona vs. California*, 292 U. S. 341, 54 S. Ct. 735; *Arizona vs. California*, 298 U. S. 558, 56 S. Ct. 848; Hearings before a Subcommittee of the Committee on Interior and Insular Affairs, United States Senate, Eightieth Congress, Second Session, on Senate Joint Resolution 145, being a resolution authorizing commencement of an action by the United States to determine interstate water rights in the Lower Colorado River Basin).

The latest of these attempts is the present action in

stituted by the State of Arizona against the State of California, and in which the State of Nevada and the United States have intervened.

The principle that the division of water use within a basin is solely an issue between the States of the basin, and not requiring the acquiescence or participation of the States of the other basin, was first recognized by the participants in the negotiation of the Compact, as we have shown above.

The same principle was later recognized by the United States Congress in the Boulder Canyon Project Act of December 21, 1928, (45 Stat. 1057), wherein, in the second paragraph of Section 4 (a) of that Act, the States of Arizona, California and Nevada were authorized to enter into an agreement for the division of the Lower Basin water use, and with no requirement that the Upper Division States acquiesce in or be parties thereto.

This same principle was also recognized by the Upper Basin States and the United States in the negotiation of the Upper Colorado River Compact, which divided the water use of the Upper Basin, and which Compact was consented to by the United States Congress. Congress and the Upper Division States did not consider that the Lower Basin States were necessary parties to that Compact, and so far as we are informed, the Lower Basin States have not contended that the Upper Basin Compact is invalid because the Lower Basin States are not parties thereto.

This same principle was recognized by the State of California in 1948. At that time, the State of California was urging the passage by Congress of the so-called McCarran Resolution, which would have required the Attorney General of the United States to institute litigation for the purpose of determining the division of the water uses in the Lower Basin. At the hearings on the McCarran Resolution in the Senate, the Assistant Attorney General of the State of California stated as follows:

"Thus, the focal point of the proposed suit is the determination of the rights of the Lower Basin States among themselves, under, and not in derogation of, the disputed documents which constitute the law of the river. There is no need to go further. NO DISPUTES OR PROBLEMS REQUIRING PRESENT DISPOSITION ARE BELIEVED TO EXIST BETWEEN THE UPPER BASIN AND THE LOWER BASIN. There is no need to determine the division of water among the Upper Basin States. They have for nearly two years been engaged in negotiation of a compact for that purpose, and it is believed that this effort will be effectual." (Emphasis ours).

"The three major issues discussed by Mr. Ely and Mr. Howard directly relate to the division of the Lower Basin water. HENCE THE UPPER BASIN STATES ARE NOT DIRECTLY CONCERNED AND NEED NOT BE MADE PARTIES." (Emphasis ours). (Hearings before the Senate Subcommittee of the Committee on Interior and Insular Affairs, United States Senate, Eightieth Congress, Second Session, on S. J. Res. 145, at page 129).

The same statement was made at the House hearings. (See Hearings before Subcommittee No. 4 of the Committee on the Judiciary, House of Representatives, Eightieth Congress, Second Session, on H. J. Res. 225, H. J. Res. 226, H. J. Res. 227, H. J. Res. 236, and H. R. 4097, at page 214).

The three major issues referred to by the Assistant Attorney General of the State of California in these hearings are briefly:

1. By what method shall the beneficial consumptive use of water in the Lower Basin be measured?

2. Are the waters referred to in Article III(b) of the Compact apportioned water or "excess or surplus" water and unapportioned?

3. How are evaporation losses from the Lower Basin mainstream storage reservoirs to be charged in the Lower Basin?

(See pages 19 and 20 of Hearings before a Subcommittee of the Committee on Interior and Insular Affairs, United States Senate, Eightieth Congress, Second Session, on S.J. Res. 145).

These are the same three issues presented by Arizona's complaint in the present action, which are found in paragraph XXII, at pages 25 and 26 of Arizona's complaint; which are:

1. Is the water referred to and affected by Article III(b) of the Colorado River Compact apportioned or unapportioned water?

2. How is beneficial consumptive use to be measured?

3. How are evaporation losses from Lower Basin mainstream reservoirs to be charged?

Respondents respectfully submit that the purpose of and the issue in this action is the division of water use in the Lower Basin: that this is an issue solely between the States of the Lower Basin, and does not require the presence of respondents for its determination.

II. THERE IS NO JUSTICIABLE CONTROVERSY REQUIRING OR JUSTIFYING THE INTERPRETATION OF THE COMPACT AS TO ANY RIGHTS OR OBLIGATIONS OF RESPONDENTS.

California raises many questions of interpretation of the Compact which she says should be determined in this action.

Before proceeding to discuss these questions in detail, we point out:

A. BY ARTICLE III(a) OF THE COMPACT, THE UPPER BASIN IS APPORTIONED "THE EXCLUSIVE BENEFICIAL CONSUMPTIVE USE OF 7,500,000 ACRE FEET OF WATER PER ANNUM."

THE UPPER BASIN'S PRESENT CONSUMPTIVE USE IS ABOUT 2,500,000 ACRE FEET, OR ABOUT ONE-THIRD OF THE APPORTIONMENT. THERE IS NO ASSERTION THAT THE UPPER BASIN IS EXCEEDING ITS RIGHTFUL USE UNDER THE COMPACT.

B. THE COMPACT, BY ARTICLE III(c), III(d) AND III(e), IMPOSES CERTAIN OBLIGATIONS UPON THE UPPER BASIN AND THE UPPER DIVISION STATES. BUT CALIFORNIA DOES NOT ASSERT ANY VIOLATIONS OF THESE OBLIGATIONS.

C. NOR DOES CALIFORNIA ASSERT THAT THE UPPER BASIN OR THE UPPER DIVISION STATES ARE VIOLATING THE COMPACT IN ANY RESPECTS.

D. THERE IS NO CONTROVERSY EXISTING BETWEEN THE UPPER BASIN AND LOWER BASIN.

GENERALLY, THE QUESTIONS OF INTERPRETATION RAISED BY CALIFORNIA ARE BASED ON THE PREMISE THAT AT SOME TIME IN THE FUTURE, A FACT SITUATION *MAY* ARISE WHICH *MAY* CAUSE A CONTROVERSY TO EXIST, THE DETERMINATION OF WHICH *MAY* REQUIRE AN INTERPRETATION OF THE COMPACT.

Respondents strenuously object to any attempt to determine their rights under the Colorado River Compact,

until such time as they are accused of a violation of the Compact, or until such time as they are accused of some act which deprives some Lower Basin State of some right which that State claims that it has by virtue of the Compact.

Here the Upper Division States have been accused of no violation of the Compact whatsoever.

The respondents also strenuously object to being made parties to this litigation for the purpose of interpreting the rights of the respondent States under the Compact on some theoretical or imagined fact situation, which could only occur many years in the future, and with no assurance that the suppositious controversy would ever exist.

Respondents further urge that they are entitled to have their rights under the Compact determined at the time that an actual justiciable controversy exists, and to have the interpretation of the Compact made with relation to an existing controversy and an actual fact situation. The position of the respondents in this respect is not without support by decisions of this Court. This Court has said:

> "Not every matter which would warrant resort to equity by one citizen against another would justify our interference with the action of the state, for the burden on the complaining state is much greater than that generally required to be borne by private parties. Before the court will intervene the case must be of serious magnitude and fully and clearly proved. And in determining whether one state is using or threatening to use more than its equitable share of the benefits of a stream, all the factors which create equities in favor of one state or the other must be weighed as of the date when the controversy is mooted."
>
> *Colorado vs. Kansas*, 320 U.S. 383, 393, 394, 64 S. Ct. 176, 181.

The Court will not grant relief against a state unless the complaining state shows an existing or presently threatened injury of serious magnitude.

Missouri vs. Illinois, 200 U.S. 496, 521, 26 S. Ct. 268, 270; *New York vs. New Jersey*, 256 U.S. 296, 309, 26 S. Ct. 268, 270; *North Dakota vs. Minnesota*, 263 U.S. 365, 374, 44 S. Ct. 138, 139; *Connecticut vs. Massachusetts*, 282 U.S. 660, 669, 51 S. Ct. 286, 289; *Alabama vs. Arizona*, 291 U.S. 286, 291, 54 S. Ct. 399, 401; *Washington vs. Oregon*, 297 U.S. 517, 522, 56 S. Ct. 540, 542.

A potential threat of injury is insufficient to justify an affirmative decree against a state. The Court will not grant relief against something feared to occur at some future time.

Alabama vs. Arizona, supra.

The judicial power does not extend to the determination of abstract questions.

New York vs. Illinois, 274 U.S. 488, 47 S. Ct. 661; *United States vs. West Virginia*, 295 U.S. 463, 474, 55 S. Ct. 789, 793.

The Court will not give advisory opinions or pronounce declaratory judgments. Its jurisdiction will not be exerted in the absence of absolute necessity.

Alabama vs. Arizona, supra; Arizona vs. California, 283 U.S. 423, 464, 51 S. Ct. 522, 529; *U. S. vs. West Virginia, supra; Massachusetts vs. Missouri*, 308 U. S. 1, 60 S. Ct. 39.

To predetermine, even in the limited field of water power, the rights of different sovereignties pregnant with future controversies, is beyond the judicial function. The courts deal with concrete legal issues, presented in actual cases, not abstractions.

U. S. vs. Appalachian Power Company, 311 U. S. 377, 423, 61 S. Ct. 291, 306.

California does not attempt to allege any facts constituting the existence of a justiciable controversy with respondents, nor would any such attempt be justified. California does not and cannot contend that the uses in the Upper Basin are in excess of its rights under the Compact. California does not and cannot contend that respondents, or the Upper Division States, are evading their obligations to the Lower Basin under the Compact.

As we shall presently show, each and every interpretation of the Compact sought by California, involving the rights and obligations of respondents, is based upon the assumption that at some time in the future, a situation or condition may arise which may require adjudication.

Under paragraph II of her brief, pages 31 to 53, California sets forth the various questions of interpretation of the Compact which she desires that respondents be required to litigate in this action. We will proceed to discuss these questions and show in each instance that there is no justiciable controversy upon which respondents can be required to litigate these questions.

DISCUSSION OF THE PARTICULAR QUESTIONS OF INTERPRETATION RAISED BY CALIFORNIA UNDER ARGUMENT II, PAGE 31 OF HER BRIEF.

California states, "THE FOUR STATES OF COLORADO, NEW MEXICO, UTAH AND WYOMING ARE NECESSARY PARTIES TO THIS ACTION BECAUSE THEY ARE PARTIES TO THE COLORADO RIVER COMPACT, THE MEANING AND EFFECT OF WHICH ARE IN CONTROVERSY IN THIS CASE, AND NO DECREE CONSTRUING THAT AGREEMENT CAN BE FULLY EFFECTIVE WHICH DOES NOT DETERMINE THEIR RIGHTS AND OBLIGATIONS AS WELL AS THOSE OF THE PRESENT PARTIES."

Under "A", page 31 of her brief, California states that respondents have certain obligations under Articles

III(c), III (d) and III(e) of the Compact, and certain rights under Articles III(a), III(e), III(f) and III(g) of the Compact, and that respondents have rights and obligations under Articles VII and VIII of the Compact.

There is, however, no allegation by California that respondents, or the Upper Division States, are exceeding their rights or evading their obligations under these various articles of the Compact, to the injury of California or the Lower Basin.

In the absence of such an allegation, there is no justiciable controversy upon which respondents' rights and obligations under these articles of the Compact can be adjudicated.

Under Argument II "B", pages 32 to 35 of brief, California discusses her controversy with Arizona over the waters of the Gila River, which is purely a lower basin dispute. As to respondents' interest therein, California states at page 34 of the brief, "The States of the Upper Division, in the calculation of their obligation under Article III(c), are thus directly affected by the question of whether or not the uses on the Gila River and other Lower Basin tributaries are accountable under Article III(a)."

Article III(c) has to do with the obligation of the Upper Division States in case there is a shortage of water to supply Mexico under the Mexican Treaty.

In other words, California says that should the time come that the Upper Division States are required to furnish water at Lee Ferry to supply a deficiency to Mexico under Article III(c), that it may then be to the advantage of the Upper Division States if California is right in her interpretation of the Gila River controversy.

California does not allege that there now exists a shortage in the supply to Mexico under the treaty and that the Upper Division States are refusing to recognize their obligation under Article III(c).

What California says in effect is that at some time in the future there *may* be a shortage of water to Mexico, and that at that time the Upper Division States *may* refuse to recognize their obligation under Article III(c), because they *may* not agree with California on the Gila River dispute.

The facts are that the Upper Division States are now consumptively using but approximately 2,500,000 acre feet of their apportioned 7,500,000 acre feet; and that under the present uses there is more than sufficient water to satisfy the Mexican needs from the unused portion of the Upper Basin's share alone.

Under Argument "C", (page 35 of brief, California raises the question that Article VIII of the Compact, providing "present perfected rights to beneficial use of waters of the Colorado River system are unimpaired by this Compact", means unimpaired as to quality as well as quantity. At the bottom of page 35 of her brief, California says, "It is a question of fact, to be developed at the trial, what effect the increased utilization of water in the Upper Basin will have upon the concentration of salts in the residue reaching Lee Ferry."

This, we believe, is typical of California's entire position of attempting in this case to determine not only all possible questions of interpretation that may arise in the future, but also to attempt to try in advance questions of fact which may hereafter arise.

We may reasonably assume from California's statement which we have just quoted, that if the Upper Division States are made parties, California will produce testimony at the trial that increased use of water in the Upper Basin, may affect the quality of the water reaching Lee Ferry, and therefore, this Court should then determine that there can be no future development in the Upper Basin because the quality of the water *might be affected*.

There is no present allegation that the present uses

in the Upper Basin are depriving California of a quality of water to which she claims she is entitled under her interpretation of the Colorado River Compact. Nevertheless, because the Upper Basin *may*, at some time in the future, make such increases in its use in some manner which might affect the quality of the water, the Upper Division States are now to be brought into Court to try this issue upon conjecture and opinion. We submit that states should not have their rights to water, which are their very life blood, determined on any such hypothetical and conjectural assumptions. Should the time come that water uses in the Upper Basin *do* affect rights which California claims to have under the Compact, then and only then should such issues be determined.

Under Argument "D", (page 36 of brief), California discusses the manner of measurement of beneficial consumptive use. California contends that it should be measured by one method, and Arizona contends it should be measured by another.

The respondents are not concerned at this time with what particular method is used to divide the water use in the Lower Basin. As to the division of the waters within a particular basin, the particular method of measurement is a matter for those states themselves to determine.

If and when a controversy arises between the two basins as to what method of measurement shall be used to determine inter-basin rights and obligations, that question can then be determined. The question will not arise in the foreseeable future.

California states, at the top of page 38 of her brief, that if her method of measurement is used for inter-basin purposes, the Upper Basin will have between 300,000 and 500,000 acre feet less of consumptive use than if the Arizont method is used.

Yet, as we have pointed out heretofore, the Upper Basin consumptive use is only about 2,500,000 acre feet,

and its apportionment is 7,500,000 acre feet. Under either method of measurement contended for, the Upper Basin use is well within the apportionment.

When Upper Basin consumptive use approaches the Upper Basin apportionment of 7,500,000 acre feet, then and not before, there may exist a justiciable controversy upon which to litigate the question of what method of measurement of consumptive use shall be used in determining interbasin obligations. At this time, there is no such controversy. Admittedly the Upper Basin is well within its apportioned use, whichever method of measurement is used.

Argument "E" (page 39, California's brief). Under this argument, California discusses the matter of how salvage water is to be charged. What we have said with regard to Argument "D" likewise applies to this argument. At some time in the future, an interbasin controversy may arise over the question of how salvage waters are to be charged. At the present time, this is an intrabasin controversy between Arizona and California. It only becomes important to the Upper Basin when the Upper Basin uses or the Lower Basin demands raise the question.

There is not now any controversy between the two basins over this question, for irrespective of how salvaged waters are to be charged, the Upper Basin use is well within its apportionment under the Compact.

Argument "F" (page 41 Brief). California contends that the Upper Basin uses are limited to a maximum of 7,500,000 acre feet in a given year under Article III(a) of the Compact.

California does not allege that the Upper Basin uses have in any year exceeded 7,500,000 acre feet. California, in effect, contends that at some time in the future, the Upper Basin *may* so develop its use, that it *might* seek to beneficially consume more than 7,500,000 acre feet of water in one year, and that *if* this did happen, it would be contrary to California's interpretation of the Compact, and therefore, this Court should now determine this question.

Until the time arrives that the Upper Basin use exceeds 7,500,000 acre feet in any one year, there is no justiciable controversy upon which the Court should make an interpretation.

Argument "G" (page 43, California brief). Under Argument "G", California states that the Upper Basin States are interested in the question of how rights may be acquired in waters surplus to those specified in Article III(a) and Article III(b). California says rights may be obtained by her in such surplus by appropriation. California does not assert that the Upper Basin is depriving her of any such waters she claims by her appropriation theory. What California does say is that the Upper Basin, at some time in the future, *may* attempt to use more than its apportioned 7,500,000 acre feet, and that *if* and when that time arrives, the Upper Basin use of the excess over 7,500,000 acre feet is subject to California's prior uses. It is again necessary to point out that the Upper Basin uses are but approximately one-third of its apportionment. Yet, California would have the Upper Basin States litigate an issue now which, if it ever arises, can only arise many years in the future and after the Upper Basin has increased its use to an excess of 7,500,000 acre feet.

Argument "H" (page 45, California brief). Under this argument, California discusses the question of whether the waters mentioned in Article III(b) are apportioned or unapportioned waters.

In the first place, III(b) water is water allocated solely to the Lower Basin, and respondents have no rights therein. In the second place, in 1948, California represented to the United States Congress, in the McCarran hearings heretofore mentioned, that this issue is a controversy between Arizona, California and Nevada, and that the respondents were not necessary parties to its determination. (See Hearings before a Subcommittee of the Committee on Interior and Insular Affairs, United States Senate, Eightieth Congress, on S. J. 145, page 429, supra).

With this we agree.

However, California, in her argument, in effect says that *if* her contention is correct, that the waters are unapportioned, and *if* III(b) waters are surplus waters, and *if* after October 1, 1963, either basin shall have reached its total beneficial consumptive use, and *if* at that time a further apportionment is thereafter made under Article III(g), and *if* the Upper Basin receives an additional apportionment, that then it may be to the advantage of the Upper Basin *if* III(b) water is construed as unapportioned water, and therefore the Upper Basin has an interest in this controversy.

Upon such a speculative and conjectural statement, California is seeking to make the Upper Division States litigate their rights.

There is no controversy existing at this time between the Upper and Lower Basins on this point. No controversy, in any event, could exist prior to October 1, 1963, which by Article III(f) is the earliest date when the matter of further apportionment can be considered.

No justiciable controversy exists between respondents and California on this question.

Argument "I" (page 46 of brief). California says that the Upper Division States are affected by the controversy between California, Arizona and Nevada over the charging of reservoir evaporation losses on Lower Basin reservoirs.

This obviously is a Lower Basin controversy. The respondents are not interested in how California, Nevada and Arizona charge the reservoir losses in the Lower Basin.

The Upper Basin States, by the Upper Colorado River Compact, charge the reservoir losses in the Upper Basin among the Upper Basin States as a consumptive use under the Colorado River Compact. (Article V, Upper Colorado River Compact).

The apportioning of the reservoir losses in the Lower Basin is purely a Lower Basin problem. The respondents are not necessary parties to a determination of this issue, and the State of California, in the McCarran hearings, represented to the United States Congress that the Upper Basin States are not directly concerned and need not be made parties to the litigation to determine this issue. With this we agree. (See Hearings before a Subcommittee of the Committee on Interior and Insular Affairs, United States Senate, Eightieth Congress, Second Session, on S. J. 145, page 429, supra).

Certainly, there is no allegation of any justiciable controversy existing between California and respondents over this question.

Argument "J" (page 48 of brief). The claims of the United States mentioned in Argument "J" of California's brief will be hereinafter discussed.

Argument "K" (pages 48 to 53 of brief). California argues that because the respondents are signatories to the compact, they must be joined in this action. That is exactly contrary to the position taken by the State of California in the McCarran hearings heretofore cited.

We repeat that California, and California alone, takes the position that the respondents and the Upper Division States are necessary parties.

This action to divide the water use in the Lower Basin is not an action to enforce the Colorado River Compact. This is an action to determine a question which was purposely eliminated from the Compact. The Compact does not and did not intend to divide the water use between the individual states within a basin. This action to divide the water use in the Lower Basin is not an action to enforce the Compact, but an action to determine rights which exist outside of the scope of the Compact.

It is also contended by California, at page 51 of her brief, that irrespective of the Compact, "All parties hav-

ing interests in Colorado River system waters must be joined." This Court has held otherwise. In the case of *Nebraska vs. Wyoming*, 295 U. S. 40, 55 S. Ct. 568, Nebraska instituted an original proceeding in this Court against Wyoming, seeking an equitable apportionment of the waters of the North Platte River. Wyoming filed a motion to dismiss, one of the grounds of which was that the State of Colorado was an indispensable party because the North Platte rises in Colorado and drains a considerable area therein. In other words, Wyoming contended that Colorado, having an interest in the North Platte River System, was an indispensable party to the controversy between Nebraska and Wyoming. This Court said, at page 43, of the U. S. Report:

> "The contention is without merit. Nebraska asserts no wrongful act of Colorado and prays no relief against her. We need not determine whether Colorado would be a proper party, or whether at a later stage of the cause pleadings or proof may disclose a necessity to bring her into the suit. It suffices to say that upon the face of the bill she is not a necessary party to the dispute between Nebraska and Wyoming concerning the respective priorities and rights of their citizens in the waters of the North Platte River."

Later Nebraska amended her complaint, alleging that Colorado,

> "By diversions of water from the river for irrigation purposes were violating the rule of priority of appropriation in force in the three states and depriving Nebraska of water to which she was equitably entitled." *Nebraska vs. Wyoming*, 325 U. S. 589, 591, 592, 65 S. Ct. 1332, 1338.

Upon these allegations the Court joined Colorado as a party. *Nebraska vs. Wyoming*, 296 U. S. 553, 56 S. Ct. 369.

Following the rule laid down in the Nebraska vs. Wyo-

ming cases, respondents state that California asserts no wrongful act of Colorado or Wyoming in the present case, nor does California allege that respondents are depriving California of any waters of the river to which she is entitled. In the absence of such allegations, respondents are not necessary parties to this action to divide water use in the Lower Basin.

Nor did this Court alter this rule in the three Arizona vs. California cases cited at page 51 of California's brief.

However, this Court, in one of these cases, *Arizona vs. California et al.*, 283 U. S. 423, 463, 464, 51 S. Ct. 522, 529, re-affirmed the rule that adjudication of rights to interstate waters must be founded on an existing justiciable controversy. This Court said:

> "There is no occasion for determining now Arizona's rights to interstate or local waters which have not yet been, and which may never be appropriated. *New Jersey vs. Sargent*, 269 U. S. 328, 338, 46 S. Ct. 122, 70 L. Ed. 289. This Court cannot issue declaratory decrees."

III. THE RESPONDENTS ARE NOT NECESSARY PARTIES TO A DETERMINATION OF THE CONTROVERSY BETWEEN ARIZONA AND CALIFORNIA UNDER THE BOULDER CANYON PROJECT ACT AND THE CALIFORNIA SELF-LIMITATION ACT.

At page 58 of her brief, California states "THE FOUR ABSENT STATES ARE NECESSARY PARTIES TO THIS ACTION IN THEIR CAPACITY AS THIRD PARTY BENEFICIARIES OF THE STATUTORY COMPACT BETWEEN THE UNITED STATES AND CALIFORNIA EVIDENCED BY THE BOULDER CANYON PROJECT ACT AND THE CALIFORNIA LIMITATION ACT."

The Boulder Canyon Project Act (45 Stat. 1057) and the California Self-Limitation Act (Chapter 16 Calif. Stats. 1929, p. 38), relate to the division of water use in the Lower Basin. These Acts are set forth at pages 9 to 31 in Appendixes to California's answer filed herein.

The Boulder Canyon Project Act, which authorized the construction of Hoover Dam, provided in Section 4(a) that no construction should be commenced until one of two conditions had been performed:

1. That all seven Colorado River Basin States ratify the Colorado River Compact; or

2. If all seven States fail to ratify the Compact in six months, then it must be ratified by six of the seven Basin States, including California, and California, by legislative act, agree "for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming" to limit her beneficial consumptive use of water from the Colorado River, for use in California, to 4,400,000 acre feet of the water apportioned to the Lower Basin by Article III(a) of the Compact, plus not more than one-half of the excess or surplus waters unapportioned by the Compact, and such uses to be subject to the Compact.

Arizona did not ratify the Compact in the six months period. The other six States, including California, did ratify the Compact, and California did pass the legislative act limiting her uses as provided for in the Boulder Canyon Project Act. This legislative act of California is commonly referred to as the California Self-Limitation Act.

California contends that Arizona is not entitled to any benefits under the California Self-Limitation Act. Her position is set forth at pages 60 and 61 of California's answer to Arizona's complaint as follows:

"Arizona, in this action, seeks to establish alleged rights dependent upon that State's participation as a party to the Colorado River Compact as a Seven-State Compact, and also seeks to establish alleged rights as a third party beneficiary of the said Statutory Compact. Arizona has not herein, or otherwise, offered to do equity and to waive any rights as such third party beneficiary, or by such waiver, or otherwise, to place California in the same position in its relation to Arizona as that which California would have occupied with respect to contractual or other rights to the use of waters of the Colorado River system, had the Legislature of the State of Arizona approved and ratified the proposed Colorado River Compact as a Seven-State Compact prior to June 25, 1929. Arizona cannot, as of February 24, 1944, and thereafter, be permitted to assert, to her advantage, and to California's detriment, rights allegedly derived from, and dependent upon, both the Colorado River Compact and the Statutory Compact." (See pages 60 and 61 of California's answer to complaint).

This is purely a dispute between Arizona and California, and the controversy relates solely to the division of the water use in the Lower Basin. This dispute has no application to inter-basin rights and obligations, nor does California allege that respondents have committed any act or omission which deprives California of any rights which she claims under these two Acts. Neither does California point out in what respect the Acts create any rights in or imposes any obligations upon respondents.

California argues that merely because respondents are named as beneficiaries in the Acts, they are necessary parties to this dispute.

This respondents deny.

Whether Arizona is or is not entitled to the benefits of this Act is a matter of no moment to respondents.

The question of whether the division of the use of the waters to which the Lower Basin is entitled under the Compact is affected by the Limitation Act, affects no rights or obligations of respondents. Respondents' rights and obligations remain the same no matter what the division of water use may be in the Lower Basin.

The mere fact that respondents are named as beneficiaries in the Acts does not create in respondents any interest in how those Acts may affect the division of water use in the lower Basin.

The mere fact that respondents are named in these Acts is not and should not be sufficient to involve respondents in this litigation, in the absence of any allegation that a justiciable controversy exists between respondents and California, involving the interpretation of respondents' rights and obligations thereunder. There is no such allegation. The respondents have been accused of no wrongful act or omission which deprives California of any right she claims.

Also, Arizona's claims under said Acts, do not affect respondents, for Arizona admits by her complaint that her claims to water use are subject to the Colorado River Compact and the availability of water under said Compact. (See prayer, p. 30 Arizona complaint).

> "Not every matter which would warrant resort to equity by one citizen against another would justify our interference with the action of the state, for the burden on the complaining state is much greater than generally required to be borne by private parties. Before the court will intervene the case must be of serious magnitude and fully and clearly proved."
>
> *Colorado vs. Kansas*, 320 U. S. 383, 64 S. Ct. 176, 181.

> "The governing rule is that this Court will not assert its extraordinary power to control the conduct of one state at the suit of another unless the threatened

invasion of rights is of serious magnitude and established by clear and convincing evidence."

Connecticut vs. Massachusetts, 282 U. S. 660, 669, 51 S. Ct. 286, 289.

The Supreme Court's jurisdiction "in respect of controversies between states will not be asserted in the absence of absolute necessity."

Alabama vs. Arizona, 291 U. S. 286, 291, 54 S. Ct. 399, 401.

It is respectfully submitted that respondents have no interests in issue in this dispute, and its determination does not require the presence of respondents as parties thereto.

IV. THERE IS NO JUSTICIABLE CONTROVERSY EXISTING BETWEEN RESPONDENTS AND THE UNITED STATES REQUIRING THE PRESENCE OF RESPONDENTS AS PARTIES TO THIS ACTION.

At page 61 of her brief, California states: "THE FOUR ABSENT STATES ARE NECESSARY PARTIES TO THE ADJUDICATION OF THE CLAIMS OF THE UNITED STATES TO THE WATERS OF THE COLORADO RIVER SYSTEM."

We have carefully read the petition in intervention filed herein by the United States of America. Nowhere in the petition do we find any claim of the United States against the Upper Division States or the Upper Basin or the respondents.

The United States makes certain affirmative claims to water use *in the Lower Basin*, and asks the Court to quiet the title of the United States of America in its right as asserted in the petition against the adverse claims of the State of Arizona and the California defendants. (Page 42, United States Petition of Intervention).

The United States has not requested that the Upper

Division States be made parties to this proceeding on the ground that they are necessary parties to the determination of the rights of the United States in the waters in the Lower Basin.

The United States has treated this action as one to determine the rights to the use of water in the Lower Basin of the river.

There is no allegation in the petition for intervention of the United States or California's motion, that the Upper Division States are now impairing, or are presently threatening to impair, or interfere with any rights which the United States claims in the waters of the river.

There is no justiciable controversy existing at this time between the Upper Division States and the United States of America.

So far as any claims of the United States to the waters of the river in the Upper Basin, the Upper Basin has made provision in the Upper Colorado River Compact as follows:

> "The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made: provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State."
>
> (Article VII, Upper Colorado River Compact, supra).

California again enters the realm of speculation and conjecture. At page 64 of her brief, she in effect says that *at some time in the future*, the United States *may* make some claim for Indian or other uses, which *may* be so large that there *may* not be sufficient water in the river to supply those claims and the uses contemplated by the Compact, including the use apportioned to the Upper Basin.

If and when that time arrives, we assume these questions may be the subject of litigation to which all the States may be parties. At the present time no such situation exists. Consequently, there is no present justiciable controversy between the Upper Basin and the United States.

The present action is directed to a division of the water use in the Lower Basin under present conditions, and not on some condition or situation which may exist at some time in the future.

In an action brought by the United States against the State of West Virginia, to determine differences of opinion over the waters of a river, this Court said:

> "But there is presented here, as respects the State, no case of an actual or threatened interference with the authority of the United States. At most, the bill states a difference of opinion between the officials of the two governments . . . . . There is no support for the contention that the judicial power extends to the adjudication of such differences of opinion. Only when they become the subject of controversy in the constitutional sense are they susceptible of judicial determination. See *Nashville, Chattanooga and St. Louis R. Co. vs. Wallace*, 288 U. S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191. Until the right asserted is threatened with invasion by the act of the State, which served both to define the controversy and establish its existence in the judicial sense, there is no question presented which is justiciable by a Federal Court. See *Fairchild vs. Hughes*, 258 U. S. 126, 129, 130, 42 S. Ct. 274, 66 L. Ed. 499; *State ex rel Texas vs Interstate Commerce Commission*, 258 U. S. 158, 162, 42 S. Ct. 261, 66 L. Ed. 531; *Commonwealth of Massachusetts vs. Mellon, supra*, 262 U. S. 477, 483-485, 43 S. Ct. 597, 67 L. Ed. 1078; *State of New Jersey vs.*

Sargent, supra, 269 U. S. 328, 339, 340, 46 S. Ct. 122, 70 L. Ed. 289." *United States vs. West Virginia,* 295 U. S. 463, 473, 474, 55 S. Ct. 789, 793.

Respondents respectfully submit there is no justiciable controversy existing between the United States and respondents requiring respondents' presence as parties to this action.

V. CONCLUSION

The opposition of the respondents to being parties to this action is more than mere reluctance to engage in expensive and prolonged litigation. Water is the lifeblood of the Upper Basin. Without it, growth and development ceases. The last major source of water available for the growth and development of the Upper Basin is the water use apportioned to the Upper Basin from the Colorado River by the Colorado River Compact.

It is of paramount importance, therefore, that the states in the Upper Basin be not required to adjudicate the Upper Basin's rights under this Compact upon speculative, assumed and imagined statements of fact, which, if they ever arise, can only arise in the distant future.

These States are entitled to have their rights under the Compact interpreted in the light of an existing set of facts, creating at the time of the interpretation a justiciable controversy, so that the interpretation of the rights of these States can be made in the light of the facts then existing.

The Upper Division States are now attempting to obtain from the United States Congress an authorization for a basin-wide development to utilize a modest portion of the 7,500,000 acre feet of consumptive use apportioned to the Upper Basin. This proposed project would utilize the beneficial consumptive use of an estimated 1,700,000 acre feet per annum, which added to the present beneficial consumptive use of 2,500,000 acre feet, would make a total of but 4,200,000 acre feet of the 7,500,000 acre feet apportioned to the Upper Basin. (See Hearings Before the Subcommitteee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, House of Representatives, 83rd Congress, Second Session, on H. R. 4449, H. R. 4443, and H. R. 4463, page 697).

Moreover, the period of construction of the works to bring this development to fruition will take an estimated thirty-three years. (See Table following page 192 of the

Hearings in the House of Representatives referred to above).

In the meantime, the growth and development in the Upper Basin is outrunning the waters now available. Any delay in the development of water use in the Upper Basin is a matter of very great moment to the Upper Division States. The inclusion of the Upper Division States as parties to this litigation will be urged by opponents of development in the Upper Basin, as a reason why Congress should delay the authorization of development until the conclusion of the litigation. In fact, such argument has already been made before the Eighty-third Congress of the United States by a representative of the State of California. The Assistant Attorney General of the State of California, Mr. Ely, in testifying before the United States Senate on the proposed plan for development in the Upper Basin said:

> "The meaning of the Document (Colorado River Compact) is now in controversy in the Supreme Court in respects which affect the measure now before you."
>
> (See Hearings Before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United State Senate, 83rd Congress, Second Session, on S. 1555, page 587).

As we have shown, there is no justiciable controversy in issue in the present action involving the rights and obligations of the respondents under the Compact.

The division of the waters to which the Lower Basin is entitled under the Colorado River Compact can be made in this litigation without the appearance of the respondents herein. California, and California alone, urges the necessity of the Upper Division States as necessary parties, and yet California, in 1948, represented to the legislative branch of the United States Government that there

was no dispute or problem requiring present disposition between the Upper Basin and the Lower Basin. California admitted at that time that the same issues which Arizona has raised by her complaint, were the only issues requiring adjudication to determine the rights of the Lower Basin States among themselves; and that the Upper Basin States were not directly concerned and need not be made parties to the litigation.

We respectfully submit that the motion of California should be denied.

Respectfully submitted,

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SUPREME COURT, U. S.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1954

No. 10 Original

STATE OF ARIZONA, *Complainant,*

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, *Defendants.*

UNITED STATES OF AMERICA, *Intervener,*

STATE OF NEVADA, *Intervener.*

BRIEF OF THE STATE OF UTAH OPPOSING THE MOTION OF THE CALIFORNIA DEFENDANTS TO JOIN THE STATE OF UTAH AS A PARTY TO THIS ACTION.

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Defendants.

UNITED STATES OF AMERICA,

Intervener,

STATE OF NEVADA,

Intervener.

BRIEF OF THE STATE OF UTAH OPPOSING THE MOTION OF THE CALIFORNIA DEFENDANTS TO JOIN THE STATE OF UTAH AS A PARTY TO THIS ACTION.

INTRODUCTORY STATEMENT

On July 15, 1954, the present motion was filed by the California defendants, asking the joinder of the States of

Utah, New Mexico, Colorado, and Wyoming. On October 26, 1954, this court granted those four states leave to file briefs responsive to that motion.

While the motion is unanimously opposed by those states respondent to it, their respective briefs must deal with slightly divergent considerations since their positions differ, to a limited extent, under the Colorado River Compact, (Exhibit A, Arizona's Bill of Complaint) hereinafter referred to as "Compact." While all four respondents are "States of the Upper Division" (Article II (e), Compact) the states of Utah and New Mexico lie partially within the Lower Basin (Article II (9) Compact) and are, to the extent that parts of those states lie in areas naturally draining into the main stream of the River below Lee Ferry, states of the Lower Basin.

Since Utah denies that they are either necessary or indispensable parties by virtue of interests either as a state of the Upper Division or as a state lying in part in the Lower Basin, it is her election to file a separate brief and to traverse, separately and affirmatively, the contentions that Utah is a necessary party under either characterization; however, Utah does join in and subscribe to all the factual statements and references, and all the legal arguments and conclusions contained in the briefs of the other respondent states, Colorado, New Mexico and Wyoming.

STATEMENT OF THE ISSUES RAISED

On January 19, 1953, the State of Arizona was granted her Motion for Leave to File a Bill of Complaint against the several California defendants. In the Bill filed pursuant

---

[1]Although Utah will show that this interest in terms of percentage of flow is infinitesimal. Infra page 16.

to that Order Arizona asked this court to determine three issues:

> (1) Is the State of California limited to the annual beneficial consumptive use of 4,400,000 acre feet of the waters of the Colorado River System *apportioned to the Lower Basin by the Compact?*
>
> (2) In what manner is "beneficial consumptive use" of the waters of the Colorado system *in the Lower Basin* to be measured?
>
> (3) How are evaporative reservoir losses from *Lower Basin* main stream impounding facilities to be charged?

(See Arizona's Motion for Leave to File Bill of Complaint and Bill of Complaint, Par. XXII, page 25.)

In response to this Motion and to the Bill of Complaint, California raised three additional questions:

> (a) Is Arizona a party to and bound by the Colorado River Compact?
>
> (b) May Arizona be a beneficiary under the California Limitation Act?
>
> (c) What are the priorities of contract between the United States and water users *in the Lower Basin?*

It may clearly be seen from the issues thus drawn that the only purpose of the action was the determination, as between the two states in the Lower Basin, Arizona and California, of the water use to which each respective state is entitled under the Colorado River Compact, the California Limitation Act, and the various other enactments constituting the Law of the River.

Pending before the 83rd Congress were two measures, S-1555 and HR-4449, which were companion bills to

authorize the Upper Basin Storage Project consisting of a reclamation program for storage of waters in the Upper Basin of the Colorado River. On January 26, 1954, in a hearing before the Irrigation Subcommittee of the House Committee on Interior and Insular Affairs, Mr. Northcutt Ely, counsel for the defendant State of California, appeared before the Subcommittee asking it to defer any action upon the bill then being considered until after a determination of the issues raised by the present controversy. (See Hearings on H.R. 4449, page 697, Serial No. 11 before Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs, 83rd Cong.) This Subcommittee rejected Mr. Ely's arguments favoring deferral of the measure and the bill came dangerously, insofar as defendants were concerned, close to passage but failed of enactment due to early adjournment of the Congress.

On April 5, 1954, in answer to a petition of the United States to intervene in the within action, the State of California had summarized the controversy (see Answer of California defendants to Petition in Intervention on behalf of the United States of America, page 67) which summary we paraphrase as follows:

(I) The quantities of water in controversy; Arizona seeks to quiet title to the consumptive beneficial use of 3,800,000 acre feet per annum of the waters of the Colorado River System—California asserts a right to the beneficial consumptive use in California of 5,362,000 acre feet per annum; Nevada seeks to quiet title in herself to 539,100 acre feet per annum. The states differ in their definition of "beneficial consumptive use."

(II) The ultimate issues; does the United States have rights "as against the parties to this cause," (meaning those parties at the time California re-

sponded to the United States' Petition). Is Arizona entitled to a decree quieting title to 3,800,000 acre feet per annum? Is California entitled to a decree permitting the beneficial consumptive use of 4,400,000 acre feet per annum plus one-half of the surplus waters unapportioned by the Compact and the rights awarded California by contracts between the United States and the defendant public agencies of and including California?

While California *now* contends, in her analysis of the issues raised, that these questions may not be effectively determined without concurrently determining the rights and obligations of the Upper Division states, nevertheless, the actual analysis by California of the issues in the lawsuit on April 5, 1954, in no way extended to any of those states not then parties to the action. California's only reservation on that question was a general statement that decisions on those points would affect absent states. (p. 75, California's Answer to United States' Petition).

On July 15, 1954, however, California filed the present motion to make the states of the Upper Basin and of the Upper Division parties to this action, attempting materially to broaden the scope of this suit beyond their previous analysis of the necessary issues.

SUMMARY OF ARGUMENT

The State of Utah is neither a necessary nor an indispensable party for the reason that they are a party to the Compact:

The State of Utah contends that this is not an action to determine any rights of Upper Basin States; that this is *not* an action in which the rule, requiring all parties to a litigated

contract to be present in the action, is applicable for the reasons that:

(1) That rule is not available against a sovereign state in the absence of present or imminently threatened injury, of which there is none alleged or in fact in existence; and,

(2) This is not an action based primarily upon the Compact;

The State of Utah is neither a necessary nor an indispensable party by reason of its interest in the Lower Basin.

For their share of the waters of the Lower Basin the State of Utah looks to, and is satisfied with the recognition of their rights by, the State of Arizona, with whom they are presently negotiating for a compact. The inclusion of Utah as a party to this action would effectively and absolutely preclude consummation of any such apportionment by agreement, the medium through which *all* inter-state matters or disputes should be resolved.

The State of Utah is neither a necessary nor an indispensable party as a beneficiary of California's Self-Limitation Act.

The only dispute in this action is the question whether or not Arizona is a beneficiary, or entitled to rely upon, that Act.

Utah is neither a necessary nor an indispensable party by reason of the claims of the United States.

The State of Utah is a party to the Upper Colorado River Basin Compact by which it has been agreed that uses by the United States in the State of Utah — as in all other

Upper Basin states . . . will be charged as a use by the State of Utah.

The purpose and nature of the present motion by the California defendants are improper and ought not to be entertained.

ARGUMENT

The State of Utah will seek to answer the contentions of the State of California in the order of their appearance in California's Motion:

POINT I

A DECREE DETERMINING THE PRESENT CONTROVERSY CAN BE EFFECTIVE IN THE ABSENCE OF THE STATE OF UTAH ALTHOUGH A PARTY TO THE COMPACT.

In California's brief supporting her motion to join, numerous decisions are collected which hold, admittedly, that in actions upon contracts, decrees construing the terms thereof cannot be entered unless all parties thereto are present in the action. These decisions are all applicable in their own peculiar set of facts but California cites no cases—and there are none—holding that the indispensable or even the necessary party rule is applicable with respect to compacts between states as quasi sovereigns. It is respectfully submitted that in this case neither the issues nor the facts even closely approximate the burden required of the state which asks relief against another state. The extent of that burden is announced in *Colorado v. Kansas*, 320 U. S. 383, 88 L. Ed. 116 at p. 124:

"Not every matter which would warrant resort to equity by one citizen against another would just-

ify our interference with the action of the state, for the burden on the complaining state is much greater than that generally required to be borne by private parties. Before the court will intervene the case must be of serious magnitude and fully and clearly proved. And in determining whether one state is using or threatening to use more than its equitable share of the benefits of a stream, all the facts which create equities in favor of one state or the other must be weighed as of the date when the controversy is mooted."

In that case an attempt was made by Kansas to show injury resulting from a material increase in the river depletion by Colorado of the Arkansas River since the adjudication of *Kansas* v. *Colorado* (206 U. S. 46, 51 L. Ed. 956, 27 S. Ct. 655) in which a bill brought by the state of Kansas was dismissed because Kansas was not entitled to "present relief;" it being expressly reserved, however, that the dismissal was without prejudice to the right of Kansas to initiate new proceedings "whenever it shall appear that through a material increase in the depletion of the waters of the Arkansas River by the defendants, the substantial interests of Kansas are being injured to the extent of destroying the equitable apportionment of benefits between the two states" (206 U. S. at page 117-118). That case was decided in 1907 and Kansas claimed in 1943 that the condition of the 1907 decree had been fulfilled, i.e., injury to the substantial interests of Kansas by Colorado uses in excess of those occurring in 1907.

It might be said that those two states, since the 1907 decision, were operating under a "decree of the court", subject to a reopening at a future time when present injury existed. An attempt to reopen that decree was denied Kansas upon the lack of sustaining the burden that Kansas was presently injured by Colorado depletion of the Arkansas

River. It might be contended that the two states, operating under a decree of the court which indicated a formula for equitably apportioning the benefits of the stream, were operating under a governing instrument similar to the Compact under which signatory states of the Colorado River Compact are presently operating; and that although injury was threatened the court would still refuse to make a definite apportionment of the river in either second feet or acre feet in the absence of a showing that a state was presently injured by excess depletion of the waters of the river.

California cites at the conclusion of her motion the case of *Nebraska v. Wyoming and Colorado*, 325 U. S. 589, 89 L. Ed. 1815. Colorado, in that case, made a motion that they be dismissed and California cites, as favorable to their position, the refusal of the court to grant that motion. However, the decision expressly says, 325 U. S. at 609:

> "Out-of-priority diversions by Colorado have had an adverse effect downstream. * * * *This alone negatives the absence of present injury*" (Emphasis added).

Further, on page 1827 (325 U. S. at 610):

> "Colorado v. Kansas, 320 U. S. 383, 88 L. Ed. 116, 64 S. Ct. 176, is not opposed to this view. That case turned on its special facts. It is true that an apportionment of the waters of an interstate river was denied in that case. But the downstream state (Kansas) did not sustain the burden of showing that since the earlier litigation between the states there had been a material increase in the depletion of the river by Colorado. * * * We held that in those circumstances a plain showing was necessary of increased depletion and substantial injury that would warrant a decree * * *."

California at page 51 of her brief further contends that "all parties having interests in the Colorado River System waters must be joined." This statement is not in accord with previous rulings of the United States Supreme Court. In *Nebraska* v. *Wyoming*, 295 U. S. 40, 55 S. Ct. 568, an action by Nebraska seeking equitable apportionment of the waters of the North Platte River, the defendant Wyoming moved to dismiss under her contention that the State of Colorado was an indispensable party having an interest in the North Platte River System, and in whose absence the controversy could not be effectively settled. This court at 295 U. S. page 43, stated:

> "The contention is without merit. Nebraska asserts no wrongful act of Colorado and prays no relief against her. We need not determine whether Colorado would be a proper party or whether at a later stage of the cause pleadings or proof may disclose a necessity to bring her into the suit."

By a subsequent amendment Nebraska alleged that Colorado "by diversions of water from the river for irrigation purposes * * * [are] depriving Nebraska of water to which she is equitably entitled" (*Nebraska* v. *Wyoming*, 325 U. S. 589, 591-2, 65 S. Ct. 1332, 1338). Upon the basis of the amended complaint the court joined Colorado as a party. *Nebraska* v. *Wyoming*, 296 U. S. 553, 56 S. Ct. 369.

A thorough analysis of the voluminous pleadings filed herein discloses absolutely no allegation that injury is threatened either by or to the State of Utah either as a state of the Upper Division or as a state of the Upper Basin entitled to limited participation in the "common-fund" of waters allocated by the Colorado River Compact to the Lower Basin. No such allegation—under the actual facts—could in good faith *be* made.

In numerous decisions this court has held that declaratory decrees, determining rights to interstate or local waters which have not yet been and which may never be appropriated, are not available to any state. *New Jersey* v. *Sargent*, 269 U. S. 328, 338, 46 S. Ct. 122, 70 L. Ed. 289; *Arizona* v. *California et al.*, 283 U. S. 423, 463, 464, 51 S. Ct. 522, 529; *Colorado* v. *Kansas*, 320 U. S. 383, 393, 394, 64 S. Ct. 176, 181, 88 L. Ed. 116, 120; that adjudication of rights to interstate waters must be founded on an existing justiciable controversy. *Arizona* v. *California, et al.*, 283 U. S. 423, 463, 464, 51 S. Ct. 522, 529; that alleged injury must be presently threatened and of serious magnitude and not merely something feared to occur at some future time. *Missouri* v. *Illinois*, 200 U. S. 496, 521, 26 S. Ct. 268, 270; *New York* v. *New Jersey*, 256 U. S. 296, 309, 26 S. Ct. 268, 270; *North Dakota* v. *Minnesota*, 263 U. S. 365, 374, 44 S. Ct. 138, 139; *Connecticut* v. *Massachusetts*, 282 U. S. 660, 669, 51 S. Ct. 286, 289; *Alabama* v. *Arizona*, 291 U. S. 286, 291, 54 S. Ct. 399, 401; *Washington* v. *Oregon*, 297 U. S. 517, 522, 56 S. Ct. 540, 542; and that to pre-determine the rights of different sovereignties pregnant with future controversies is beyond the judicial function; that the court's jurisdiction is limited to concrete legal issues presented in actual cases and not abstractions. *U. S.* v. *Appalachian Power Company*, 311 U. S. 377, 423, 61 S. Ct. 299, 306.

It must be emphasized that the Colorado River Compact, the Compact now sought to be construed by the states of Arizona and California, and which Compact, it is alleged by California, cannot be effectively construed without the presence of all states signatory thereto, *was never intended to divide the water use among either the states of the Upper Basin, the states of the Lower Basin, the states of the Upper Division, or the states of the Lower Division.* It is, on the contrary, a compact *dividing only the water as between one*

entity, the Upper Basin, and a second entity, the Lower Basin.

The division of the waters apportioned to either basin as between the states of that basin is a matter entirely outside the scope of the Compact.

This litigation involves only the right to the use of the waters of the Colorado River System after the same have passed Lee Ferry, Arizona, or which originate on tributaries in the Lower Basin. (And Utah, as will be shown in the Argument under Point 2 herein, is not involved in *any* dispute—much less a justiciable controversy—over her share of those waters characterized as "Lower Basin" waters.) None of the parties to the action (Arizona the plaintiff, the California defendants, nor the intervenors Nevada and the United States) has questioned the right of the Upper Basin states to the beneficial consumptive use of 7,500,000 acre feet of the water of the Colorado River System.

An examination of the issues as analyzed by either the State of California or the State of Arizona and a study of the contentions of the State of Nevada and the United States fail to disclose any allegation or even any inference that the Upper Basin states separately or collectively threaten any injury to the Lower Basin states. None of the states presently parties to the action seeks the enforcement of the Compact against any states of the Upper Basin. There is no injury of which they could complain. As has been said heretofore, the Compact apportions 7,500,000 acre feet per annum to each Basin. The present beneficial consumptive use in the Upper Basin is but approximately one third of that apportionment under Article III(a) or about 2,500,000 acre feet. It is not in keeping with the practice of this Court to entertain an action against a state even where a contract is involved when any breach can occur only in the remote

future, if at all. The time when the Lower Basin may have its day in Court will be the time when, if ever, the Upper Basin states' use exceeds that figure some three times greater than their present use. To determine those questions involving hypothetical situations which may arise in the future would be palpably unfair to the states of the Upper Basin who are entitled to a decision on none other than actual controversies in fact in existence.

On pages 31 to 53, inclusive, California's brief sets forth various questions of interpretation of the Compact which, it is contended, the respondent states ought now to be required to litigate. We concur with and join in the seriatim treatment of these points by the States of Colorado and Wyoming, who have ably disposed of each. We wish to add, however, that irrespective of the final determination by this Court of any of those interpretation questions, there still is no violation by the State of Utah or the Upper Basin of any of the terms of the Compact; no diversions in excess of those granted the respondents under the Compact; and therefore, no justiciable issue either upon the pleadings or upon the facts. *Nebraska* v. *Wyoming*, 295 U. S. 40, 55 S. Ct. 568, *Colorado* v. *Kansas*, 320 U. S. 383, 88 L. Ed. 116.

Since it was never intended that the Compact divide the waters of the Colorado River between states, but only between basins, this action can only be a Lower Basin dispute since they have failed to negotiate by Compact for a division of their apportionment. This the Upper Basin has done, and their apportionment among themselves of water use, and their resolution of many of the questions California now would require them to litigate, were approved by Congress (63 Stat. 31). The full text of this Compact appears as Appendix 39, Vol. II Appendixes to California's Answer.

In Summary under California's Paragraph I, the State of Utah denies that no decree determining the meaning and

effect of the Colorado River Compact can be effective in the absence of all parties to that Compact and contends that Utah is neither indispensable nor necessary; that Utah on the contrary cannot be made a party to this action for the reason that injury is neither threatened to nor by the State of Utah.

POINT 2

UTAH IS NEITHER A NECESSARY NOR AN INDISPENSABLE PARTY FOR THE REASON THAT THEY SHARE INTERESTS IN THE LOWER BASIN.

The State of Utah concurs in Arizona's Bill of Complaint, page 19, para. XIII, line 18, and page 21, para. XVII (a). Utah also expresses concurrence in the allegation of Arizona in response to California's motion to join the states of Colorado, New Mexico, Utah and Wyoming found on page 7, para. XII. These references to which Utah subscribes and by which Utah is satisfied that their interests in the Lower Basin are recognized, read as follows:

Arizona's bill of complaint:

Para. XIII, line 15 (page 19):

> "The United States also agrees to deliver to Arizona from Lake Mead storage one-half of the unappropriated surplus, subject to the availability thereof to Arizona under the Compact and *subject to whatever rights Nevada, New Mexico and Utah may be determined to have therein*" (Emphasis added).

Para. XVII (a) (page 21):

> "(a) Subject to the availability of water under the Compact and the project act and *subject to the rights of the States of New Mexico and Utah*,

> Arizona has the right to take and divert from the Colorado River System annually so much water as may be necessary for the beneficial consumptive use in Arizona of 3,800,000 acre feet * * *" (Emphasis added).

Response of Arizona to California's motion to join Colorado, New Mexico, Utah and Wyoming:

Para. 8 (page 5):

> "Complainant alleges that the only uses of water from the Colorado River System by the State of Utah in the lower basin are on the Virgin River within that state and the *complainant is presently engaged in negotiating a Compact with that State respecting such uses, and that there is no dispute existing between complainant and the state of Utah*" (Emphasis added).

Certainly Arizona seeks no relief as against the Upper Basin generally or against the State of Utah specifically. California seeks no relief against the State of Utah either as a state of the Upper Basin having an interest in the "common fund" of water in the Lower Basin or as a state both of the Upper Division and of the Lower Basin. In neither California's affirmative defenses to Arizona's complaint nor in their traverse to the allegations of Arizona or to any other party may be found any contention seeking or demanding relief to the State of California against the State of Utah as either a state of the Upper Basin or as a state of the Lower Basin. Without such an allegation—and no such allegation could in good faith be made—there is nothing in the pleadings nor in the provable facts to be determined which can possibly disclose a necessity to bring Utah into the suit. *Nebraska v. Wyoming*, 295 U. S. 40, 55 S. Ct. 568.

The interests of the State of Utah in the waters of the Lower Basin are certainly *de minimis*. Their maximum

rights and claims to the waters of the Lower Basin do not equal in magnitude even 2½ percent of the water allocated by the Compact to the Lower Basin exclusive of surplus or unappropriated water. Clearly applicable here is the statement of this court in *Colorado* v. *Kansas*, 320 U. S. 383, 88 L. Ed. 116 at page 124:

> "Before the court will intervene the case must be of serious magnitude and fully and clearly proved."

Unquestionably there is no alleged wrongful act of the State of Utah and no prayer for relief against that state such as is required by the doctrine of *Nebraska* v. *Wyoming*, 295 U. S. 40, 55 S. Ct. 568. Certainly this is the precise situation of which this court was speaking in *Colorado* v. *Kansas*, (320 U. S. 383, 88 L. Ed. 116), when it held that the Supreme Court would not intervene in actions between sovereign states in matters best settled by compact. Decisively should they refuse to intervene where it appeared that the matter might be amicably settled by mutual agreement or diplomatic relations between the states. (See also *Washington* v. *Oregon*, 214 U. S. 205, 218, 53 L. Ed. 969, 971, 29 S. Ct. 631.) To draw the State of Utah into this dispute upon the ground that they are presently interested but neither injured nor threatening injury in a controversy between the States of California and Arizona with respect to waters by the great preponderance in magnitude owned and vested in those other states would be absolutely to preclude the possibility of an amicable settlement of Utah's rights by compact and by negotiations. This contention fits squarely within the rule announced in *Colorado* v. *Kansas* (320 U. S. 383, 88 L. Ed. 116), where this court said, 320 U. S. at page 392:

> "The reason for judicial caution in adjudicating the relative rights of states in such cases is that, while we have jurisdiction of such disputes, they involve

the interests of quasi-sovereigns, present complicated and delicate questions, and, due to the possibility of future change of conditions, necessitate expert administration rather than judicial imposition of a hard and fast rule. Such controversies may appropriately be composed by negotiation and agreement, pursuant to the compact clause of the Federal constitution. We say of this case, as the court has said of interstate differences of like nature, *that such mutual accommodation and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power*" (Emphasis added).

POINT 3

ABSENCE OF UTAH AND THE STATES OF THE UPPER DIVISION DOES NOT PRECLUDE AN EFFECTIVE INTERPRETATION OF THE ENACTMENTS AND COMPACTS KNOWN AS THE LAW OF THE RIVER UPON THE GROUND THAT THOSE ABSENT STATES ARE THIRD PARTY BENEFICIARIES TO THOSE STATUTORY ENACTMENTS OR STATUTORY COMPACTS.

The statutory compacts to which reference is made by California in their motion are the Boulder Canyon Project Act (45 Stat. 1057) and the California Self Limitation Act (Ch. 16; Calif. Statutes, 1929, p. 38). These acts are set out at length at pages 9 to 31 in Appendixes to California's Answer to Arizona's Bill of Complaint on file herein. The State of Utah adopts the argument of the States of Colorado and Wyoming in their brief concurrent hereto, without reiterating their arguments to this point.

It may be said, for purposes of continuity and integration of this brief, that the crux of this particular dispute is

whether or not Arizona is entitled to place reliance upon the California Self Limitation Act adopted as a condition to fulfillment of the Boulder Canyon Project Act (which authorized the construction of Hoover Dam,) for the reason that Arizona delayed ratification of the Colorado River Compact. This is purely an intra-basin problem between *California* and *Arizona* and does not involve either an obligation of the Upper Basin or of any other states. It does not involve Utah as a Lower Basin participant because the question is solely whether *Arizona* may place reliance on the Limitation Act.

California does not allege that the Upper Basin States or the State of Utah, New Mexico or Nevada are no longer beneficiaries to the Act or that any duties are imposed upon any of those states or that Basin by reason of their characterization as such beneficiaries.

POINT 4

THERE IS NO JUSTICIABLE CONTROVERSY EXISTING BETWEEN RESPONDENTS AND THE UNITED STATES REQUIRING THE PRESENCE OF RESPONDENTS AS PARTIES TO THIS ACTION.

The State of Utah concurs in the more amplified treatment given this point in Colorado's brief.

We only add that the United States intervened, as we comprehend their Motion and Petition in Intervention, to secure the water use rights of its agencies, instrumentalities, or wards, at least insofar as the Upper Basin States are concerned. To this point in California's Motion, the complete answer is that by Article VII of the Upper Colorado River Basin Compact, (63 Stat. 31, Vol. 2, Appendix 30, Cal. Appendixes to the Answer) it has been agreed that those uses

by the United States shall be, as to the Upper Basin, charged as a use by the state in which such use is made.

Here again, California is attempting to inspire determination by litigation of a problem already settled by negotiations and Compact. This again illustrates California's ostensible purpose to defeat the doctrine that this Court will not permit invocation of its jurisdiction over a state when the matter should and can be [and indeed this particular problem has been] settled through the medium of accommodation and agreement. *Colorado* v. *Kansas* (320 U. S. 383, 88 L. Ed. 116).

CONCLUSION

After Arizona had been granted leave to file a Bill of Complaint in this action, after the issues had been joined by an Answer, a Reply, and a Rejoinder, after two petitions to intervene had, after response by the parties, been granted, and after a Special Master had been appointed, this motion by the California defendants was filed.

It was also filed after counsel for the movant had urged deferral of Congressional authorization of the Upper Colorado Project until issues in the pending action between California and Arizona could be settled[2]. The body before whom this argument was developed apparently rejected the logic presented, by a recommendation approving the project. The granting of the present motion would be a tangible encouragement for the re-assertion of that same argument. We respectfully submit that this motion is calculated to delay both the pending litigation and the proposed project.

Whatever the movants' purpose might be, we further contend that they have not and cannot assert a ground upon which any relief against the State of Utah may be granted.

---

[2]See Hearings before Subcommittee on Irrigation and Reclamation, House Committee on Interior and Insular Affairs on H. R. 4449, p. 697.

THE STATE OF UTAH AS AN UPPER BASIN STATE

As this and the concurrent briefs of respondents to this motion have demonstrated, this is a dispute involving waters apportioned to the Lower Basin. The Compact under which California seeks to join the absent states as "parties to a contract" never has had as any of its purposes, the distribution of waters between states within a Basin; therefore the numerous questions isolated by the California defendants which pertain to such a distribution between them and the other present parties cannot come under the aegis of the Compact. In other words, this is not a suit upon the Compact.

The only suit which could be brought under the Compact would be for the determination of inter-basin rights and obligations. No allegations charge any violation of the Compact by the Upper Basin. No such allegation could in good faith be made. Present injury must be alleged[3].

UTAH AS A STATE ENTITLED TO PARTICIPATE IN THE LOWER BASIN.

The State of Utah has a limited right of participation in the Lower Basin waters. They are now negotiating with Arizona for a distribution of their share by Compact. For this court to assume jurisdiction over Utah under that situation would be contrary to this court's holdings that matters between states should be settled by negotiation and Compact[4]; that a justiciable disputed issue must be in existence[5];

---

[3] *Nebraska* v. *Wyoming*, 325 U. S. 589, 89 L. Ed. 1815.

[4] *Washington* v. *Oregon*, 214 U. S. 205, 218, 53 L. Ed. 969, 971, 29 S. Ct. 631.

[5] *Missouri* v. *Illinois*, 200 U. S. 496, 521, 26 S. Ct. 268, 270.

or imminently threatened; of serious magnitude; and fully and clearly proved.[1]

We respectfully contend that the State of Utah should not be joined as a state of the Upper Basin or as a state entitled to participate in the waters of the Lower Basin, and that the motion of the California defendants should be denied.

---

[1] *Connecticut* v. *Massachusetts*, 282 U. S. 660, 669, 51 S. Ct. 286, 289.

[2] *Colorado* v. *Kansas*, 320 U. S. 383, 88 L. Ed. 116, 124.

[3] Ibid.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 10 Original

STATE OF ARIZONA, *Complainant*,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, *Defendants*.

UNITED STATES OF AMERICA, *Intervener*,

STATE OF NEVADA, *Intervener*.

BRIEF OF NEW MEXICO OPPOSING MOTION OF CALIFORNIA TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH AND WYOMING.

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UNITED STATES OF AMERICA, *Intervenor*,

STATE OF NEVADA, *Intervenor*.

BRIEF OF NEW MEXICO OPPOSING MOTION OF CALIFORNIA TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH AND WYOMING.

PRELIMINARY STATEMENT

On the 26th day of October, 1954, the Court entered an Order in this case which reads as follows:

> "Motion of California in ten original to join Colorado, New Mexico, Utah and Wyoming will be held for sixty days to enable those states to file printed responses."

In response to the Order of the Court, Colorado and

Wyoming have filed herein their separate brief limited to the question of joinder from the standpoint of the four states, Colorado, Wyoming, New Mexico, and Utah, as States of the Upper Basin. The status of Colorado, Wyoming, New Mexico and Utah as Upper Basin states, or as States of the Upper Division, are all identical insofar as the question of joinder is concerned. However, as will be seen by examination of the language of the Colorado River Compact of 1922, New Mexico and Utah are also states of the Lower Basin. For this reason, New Mexico adopts the brief filed herein by the states of Colorado and Wyoming in opposition to joinder based upon the Motion of California. However, in view of the fact that the brief filed by Colorado and Wyoming does not deal with the status of New Mexico and Utah as states of the Lower Basin, we deem it appropriate for these two states to file separate briefs opposing the Motion to join based upon the status of New Mexico and Utah as states of the Lower Basin.

STATUS OF NEW MEXICO AS DEFINED IN COLORADO RIVER COMPACT OF 1922

Article II of the 1922 Compact reads in part as follows:

"As used in this compact:—

(e) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also

all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry."

Article III reads in part as follows:

"(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre feet per annum."

Thus by Article II e and II f, New Mexico is one of the "States of the Upper Division" and of the "Upper Basin"; also by II g it is one of the States of the "Lower Basin". (Text of Colorado Compact, November 24, 1922, Page 1, Appendixes to the Answer of California).

It should be noted that the allocation of "exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum," to both the Upper Basin and to the Lower

Basin. III a, includes "all water necessary for the supply of any rights which may *now* exist." The provisions of III b refers to the right of the Lower Basin to *increase* its beneficial consumptive use of such waters by one million acre feet per annum.

By Article VIII "Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact."

STATEMENT OF POSITION OF NEW MEXICO

New Mexico's principal interest in the consumptive use of water from the Colorado River System arises because of its status as one of the four states of the Upper Basin and of the Upper Division. Its interest as a State of the Lower Basin is dependent upon its ability to make consumptive use of a portion of the water of the Gila River and its tributaries which rise in the Western part of the State of New Mexico and flow across Arizona and into the Colorado River. It is physically impossible for New Mexico to divert for consumptive use in the State any waters from the main stream of the Colorado River, or from Lake Meade or any other reservoir on the main stream. Her water must come from the Gila or its tributaries in New Mexico, or possibly by exchange with Arizona, of main stream water for tributary water, which can be effected by negotiation —not by litigation.

The quantity of water which it may divert for beneficial consumptive use within the State is limited by physical and geographical factors. The acreage presently being irrigated is less than 10,000 acres, a figure which is infinitesimal compared to the claims of Arizona and California. Both states, however, recognize that New Mexico has the

states of the Upper Division are "indispensable" parties in the sense that the case may not proceed without them.

5. Joinder of the four states at this time, under present status of pleadings, would be premature.

The following principles apply on the question of joinder of all four states: Colorado, Wyoming, Utah and New Mexico, as well as to New Mexico and Utah as states of the Lower Basin:

> It will not grant relief against a state unless the complaining state shows an existing or presently threatened injury of serious magnitude. *Missouri vs. Illinois*, 200 U.S. 496, 521; *New York vs. New Jersey*, 256 U.S. 296, 309; *North Dakota vs. Minnesota*, 263 U.S. 365, 374; *Connecticut vs. Massachusetts*, 282 U.S. 660, 669; *Alabama vs. Arizona*, 291 U.S. 286, 291; *Washington vs. Oregon*, 297 U.S. 517, 528.
>
> A potential threat of injury is insufficient to justify an affirmative decree against a state. The court will not grant relief against something feared to occur at some future time. *Alabama vs. Arizona*, supra. The judicial power does not extend to the determination of abstract questions. *New York vs. Illinois*, 274 U.S. 288; *United States vs. West Virginia*, 295 U.S. 463.
>
> The court will not give advisory opinions or pronounce declaratory judgments. Its jurisdiction will not be exerted in the absence of absolute necessity. *Alabama vs. Arizona*, supra., *Arizona vs. California*, 283 U.S. 423; *U. S. vs. West Virginia; Massachusetts vs. Missouri.*
>
> To predetermine, even in the limited field of water power, the rights of different sovereignties pregnant with future controversies, is beyond the judicial function. *U.S. vs. Appalachian Power Company*, 311 U.S. 377, 432.
>
> The exercise of original jurisdiction in an inter-state

case is not mandatory: (Georgia vs. Pennsylvania Railroad Company, 324 U.S. 439, 464; North Dakota vs. Chicago and Northwestern Railroad Company 257 U.S. 485.) The mere fact that a state is plaintiff is not enough (Wisconsin vs. Pelican Insurance Co., 127 U.S. 265; Oklahoma vs. A.T. & S.F. Ry., 220 U.S. 277).

Rule 19 of the Federal Rules of Civil Procedure is not necessarily controlling in this case. Rule 9 of the Supreme Court rules governing procedure in original actions, sub-paragraph 2 reads as follows: "The form of Pleadings and Motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a *guide* to procedure in original actions in this court." Sub-paragraph 3 of the rule governs the filing of the initial Pleading in an original action, and the procedure followed by the court in either granting or refusing a Motion for leave to file the initial petition. Sub-paragraph 6 of the rule states "additional Pleadings may be filed and subsequent proceedings had as the court shall direct."

In this case, the State of Arizona filed its Motion for leave to file its initial pleading and leave was granted by the court. The court no doubt determined that the petition stated a justiciable controversy between the State of Arizona and State of California and the nine additional defendants. California answered the petition of Arizona and joined issue on the allegations of Arizona's petition and asserted four affirmative defenses. Subsequently, the United States and the State of Nevada sought and were granted leave to intervene. We submit that the initial petition of the State of Arizona did not state a justiciable controversy with the states of Colorado, Wyoming, Utah and New Mexico. We submit further that neither the State of

Nevada nor the United States has alleged any fact creating a justiciable controversy with either of the four absent states.

In the case of *Nebraska vs. Wyoming*, 295 U.S. at page 43, the Court said:

> "Nebraska asserts no wrongful act of Colorado and prays no relief against her. We need not determine whether Colorado would be a proper party or whether at a later stage of the cause pleadings or proof may disclose a necessity to bring her into the suit."

We believe the above language is applicable to the pleadings in this case and that the motion of California should be denied.

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No. 10, Original

In the Supreme Court of the United States

October Term, 1954

STATE OF ARIZONA, Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, Defendants,

UNITED STATES OF AMERICA, Intervener,

STATE OF NEVADA, Intervener.

BRIEF OF THE STATE OF NEVADA, INTERVENER, IN RE MOTION OF CALIFORNIA TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH AND WYOMING

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No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1954

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS,

UNITED STATES OF AMERICA, INTERVENER,

STATE OF NEVADA, INTERVENER.

BRIEF OF THE STATE OF NEVADA, INTERVENER, IN RE MOTION OF CALIFORNIA TO JOIN AS PARTIES THE STATES OF COLORADO, NEW MEXICO, UTAH AND WYOMING

STATEMENT

Heretofore and after the United States and the State of Nevada were permitted to intervene in the original case, and after the cross-pleadings of the complainant, the defendants and the interveners had been filed, whereby the issues were drawn between said parties, the California defendants interposed their motion to join as additional parties the States of Colorado, New Mexico, Utah and Wyoming, each said State being a signatory to the Colorado River Compact. The main ground upon which said motion was and is predicated being that "The meaning and effect of the Colorado

River Compact are in controversy in the present "case" and that "No decree determining the meaning and effect of that Compact, considered as a contract, can be fully effective in the absence of the other four parties to it." Defendants' Motion to Join, page 2, par. I.

The States of Colorado, New Mexico, Utah and Wyoming, having filed herein their respective briefs opposing the granting of the motion to join them as parties in the case, notwithstanding the fact that each of them is a party to the Colorado River Compact, wherein most valuable rights to the beneficial consumptive use of the waters of an interstate stream were and are apportioned to the respective upper and lower basins, which said rights are interrelated and subject to be drawn in question by the issues developed by the pleadings filed herein by the original parties and the interveners.

A substantially correct summary of the issues so developed by the pleadings is contained in Exhibit A, pages 7–22, California's Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming. Nevada submits that the issues as stated in the summary thereof demonstrates that the States of New Mexico and Utah are indispensable parties, and that Colorado and Wyoming are, at least, necessary parties.

The States of New Mexico and Utah are Indispensable Parties

New Mexico and Utah, in addition to being classed as States of the Upper Basin of the Colorado River Stream System, are States of the Lower Basin, with the right accorded each of them to the beneficial consumptive use of its equitable share of the water apportioned to the Lower Basin by the Colorado River Compact. Art. II(g), Art. III(a), (b), (g), Compact: Pages 2–3, Brief, New Mexico. Utah, in its brief in opposition to California's motion, admits it has a limited right of participation in the Lower Basin waters, and attempts to avoid participation in the instant case by stating they are now negotiating with Arizona for distribution of Utah's share in such waters by Compact. Page 20, Utah's Brief.

In this connection, it is interesting to note that Article XVIII, Paragraph b, of the Upper Colorado River Basin Compact to which New Mexico and Utah are signatories, provides: "The State of New Mexico and the State of Utah reserve their respective rights and interest under the Colorado River Compact as States of the Lower Basin." Vol. II, page 75, California's Appendixes to Answer.

Nevada was given leave to intervene herein by Order of this Court entered June 1, 1954, pursuant to its motion and petition therefor, filed December 21, 1953. Upon the filing of said motion and petition, service of copies thereof was made upon the respective Attorneys General of Colorado, New Mexico, Utah and Wyoming, even though they were not parties in the case.

Nevada specifically alleged in its petition the necessity of the increasing of the beneficial consumptive use of water in the Lower Basin by one million acre-feet of water as provided and authorized in and by Article III(b) of the said Compact, and that said increase must be had by authoritative concerted action of the five Lower Basin States. See pars. Nos. VIII, X, XI, XIII, XX, XXIV. Further, in the prayer of its petition, Nevada prayed that the rights of the States of Arizona, California, Nevada, New Mexico, Utah and the United States in and to the use of the waters of the Colorado Stream System be adjudicated and forever set at rest, and also that the additional one million acre-feet of water, as provided in Article III(b) of the Compact, is water apportioned to the Lower Basin, subject to use only when all of the Lower Basin States shall have by authoritative compact or agreement increased the beneficial consumptive use in said Basin.

During the month of May, 1954, the United States, as intervener in the case, filed and submitted its Memorandum Requesting Pre-Trial Conference, based upon the ground that the basic issues in the case were far-reaching fundamental questions relating to the respective rights of the parties litigant in the Colorado River System; that from the pleadings the broad scope of the long-standing controversy was manifest. Page 2, Memorandum.

Nevada interposed its Memorandum in Reply to the Memorandum of the United States, and therein specifically pointed out the necessity of the joinder of New Mexico and Utah, as follows:

> Notwithstanding the fact that New Mexico and Utah unquestionably possess rights to the use of the waters of the Colorado River Stream System apportioned to the Lower Basin States and by reason thereof each said State is an indispensable party to this cause, neither of them has been made a party thereto nor has either petitioned the Court for leave to intervene. Nevada most respectfully suggests that unless and until New Mexico and Utah are made or become parties herein, vital issues pertaining to the apportionment of the waters to which all of the Lower Basin States are entitled under the Compact cannot be judicially fixed and determined. And Nevada has so alleged in Paragraphs XIII, XIV of the Petition of Intervention on Behalf of the State of Nevada filed herein December 21, 1953. Nevada suggests that all of the vitally necessary issues are not now sufficient, or at all, joined to warrant a pre-trial conference.

and,

> Answering Paragraph IV of the Request for Pre-Trial Conference of the United States, the State of Nevada denies that the reasons mentioned by the United States justify a pre-trial conference at this juncture of the proceeding and in this connection alleges that all the Lower Basin States are indispensable parties to this cause and until all such States are parties hereto and the issues fully joined between them and the United States, a pre-trial conference is premature. Nevada Memorandum, Pars. I, IV.

Copies of the Nevada Memorandum were served on the Attorneys General of New Mexico and Utah, notwithstanding the fact that neither of said States were parties in the case. Notice that

beyond question Nevada considered them indispensable parties with valuable rights in and to the waters apportioned to the Lower Basin States by the Colorado River Compact; rights that of necessity must be fixed and determined in order that each of the Lower Basin States would in time to come receive its equitable share of such water, without further prolonged litigation.

Neither the State of New Mexico nor Utah has answered Nevada's contention that Article III(b) water to the extent of one million acre-feet, can only be brought into the beneficial consumptive use increase in the apportionment of water to the Lower Basin so agreed to in the Colorado River Compact, unless and until all the States in the Lower Basin by compact or agreement, so determine. Certainly New Mexico and Utah are vitally interested in securing for their people every acre-foot of water possible, and having reserved their respective rights to the use of water apportioned the Lower Basin when becoming signatories to the Upper Basin Compact, they reserved valuable rights to participate in the apportionment between the Lower Basin States, not only of III(b) water, but also III(a) water.

To now object to becoming parties in the case, and pleading their rights to the beneficial consumptive use of the waters in question, can have but one ultimate result, i.e., that whatever final judgment and decree may be entered by this Court herein, without the determination of the rights of New Mexico and Utah, the door will remain open for them or either of them in years to come, to seriously question the rights of California and Nevada and even those of Arizona.

The Status of New Mexico and Utah With Respect to Waters Apportioned the Lower Basin States by the Colorado River Compact

As stated hereinbefore, the States of New Mexico and Utah in Article XVIII(c) of the Upper Colorado River Basin Compact, therein reserved their respective rights and interest under the Colorado River Compact as States of the Lower Basin. Most certainly

those rights extend to the beneficial consumptive use of a portion of the waters of the Colorado River Stream System apportioned to the Lower Basin States in and by Article III(a) and (b) of the Colorado River Compact. Arizona, the complainant herein, alleges in its Complaint that "Arizona expects to negotiate with New Mexico and Utah a compact which will define the respective rights of those States to participate as Lower Basin States in the use of Colorado River water apportioned now or hereafter to such Lower Basin." Par. XV, Arizona's Complaint. In the prayer of such Complaint Arizona prays, first, that its title to the annual beneficial consumptive use to 3,800,000 acre-feet of water apportioned to the Lower Basin by the Colorado River Compact be forever confirmed and quieted, subject only to the rights of the States of New Mexico and Utah; second, that California be forever limited to 4,400,000 acre-feet of such apportioned water; third, that the defendants be forever enjoined from asserting against plaintiff in any manner, any claim to the waters of said River System which interferes with plaintiff's rights to the use of 3,800,000 acre-feet of water so apportioned, subject only to the right of New Mexico and Utah; fourth, that as to surplus waters, California be entitled to one-half thereof, and Arizona to the remainder, less a quantity of not to exceed one twenty-fifth of the total to the State of Nevada, less whatever rights New Mexico and Utah may have in such surplus.

It is apparent from the briefs of New Mexico and Utah, notwithstanding their express reservations in the Upper Colorado River Compact as to their rights as Lower Basin States under the Colorado River Compact, that they and each of them rely upon the alleged expectations of an Arizona Compact to satisfy their respective rights as Lower Basin States, to the beneficial consumptive use of the waters in question. In brief, relying upon a compact entered into with one Lower Basin State concerning Lower Basin water, to the exclusion of the rights of two other Lower Basin States, California and Nevada.

The aspects of the case have been most materially changed since

the intervention of the State of Nevada, so ordered June 1, 1954. Most certainly now Nevada's right to the beneficial consumptive use of Lower Basin water must be adjudicated. Nevada, as well as California, has the right to insist that the rights of New Mexico and Utah to the use of Lower Basin water, whether it be apportioned III(a), or III(b), or unapportioned surplus water, be stated, and claims therefor submitted to the Court in proper pleadings therefor.

New Mexico and Utah each have a vital interest in the subject matter in this case; an interest that cannot be settled, determined and adjudicated by a compact or agreement with one particular State; an interest that is not severable from the interest of each and all of the Lower Basin States.

The Rule With Respect to the Joinder of Necessary and Indispensable Parties

With all due respect to the authorities for and against the joinder of the States of Colorado, New Mexico, Utah and Wyoming, cited and relied upon by the respective parties for and against the motion to so join them, Nevada submits that the leading case indicating the criteria by which to determine whether or not a party is indispensable is *State of Washington vs. United States, C.C.A.9, 87 F.(2d) 421*, decided December 18, 1936, and followed with approval in *Pioche Mines Consol. Inc. vs. Fidelity-Philadelphia Trust Co., C.C.A.9, 202 F.(2d) 944*, decided March 23, 1953. The State of Washington vs. United States case concerned a suit by the United States against the Columbia River Packers Association, et al., in which the States of Washington and Oregon filed motions for leave to intervene. From a decree for plaintiff (U. S. v. Columbia River Packers Ass'n., 11 F. Supp. 675), the defendants appeal, and, from orders denying their respective motions for leave to intervene, the States of Washington and Oregon separately appeal. In course of the opinion the Court said at page 427:

> In cases where there is error in non-joinder of parties, either necessary or indispensable, the Courts have fallen

into common error by designating the error as "jurisdictional." The defect is not, properly speaking, a jurisdictional one as shown by the following quotation from Shields v. Barrow, supra 17 How.130, 141, 15 L.Ed. 158: "As is observed by this court, in Mallow v. Hinde, 12 Wheat.(193) 198 (6 L.Ed. 599), when speaking of a case where an indispensable party was not before the court, 'we do not put this case upon the ground of jurisdiction, but upon a much broader ground, which must equally apply to all courts of equity, whatever may be their structure as to jurisdiction; we put it on the ground that no court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court.'" Citing cases.

There are many adjudicated cases in which expressions are made with respect to the tests used to determine whether an absent party is a necessary party or an indispensable party. From these authorities it appears that the absent party must be interested in the controversy. After first determinmg that such party is interested in the controversy, the court must make a determination of the following questions applied to the particular case: (1) Is the interest of the absent party distinct and severable? (2) In the absence of such party, can the court render justice between the parties before it? (3) Will the decree made, in the absence of such party, have no injurious effect on the interest of such absent party? (4) Will the final determination, in the absence of such party, be consistent with equity and good conscience?

If, after the court determines that an absent party is interested in the controversy, it finds that all of the four questions outlined above are answered in the affirmative with respect to the absent party's interest, then such absent

party is a necessary party. However, if any one of the four questions is answered in the negative, then the absent party is indispensable.

Applying the rule to the instant case, by answering the four several questions therein:

(1) Is the interest of New Mexico and Utah distinct and severable with respect to the waters apportioned to the Lower Basin?

Answer: No. The Colorado River Compact apportions no water to any individual State. Each State is entitled to its equitable share thereof upon proof of the necessity for beneficial consumptive use.

(2) In the absence of such party, can the Court render justice between the parties before it?

Answer: No. The rights to the beneficial consumptive use of the waters in question are interrelated and the final determination of any one right detracts from every other right therein to the extent determined for the one right so adjudicated.

(3) Will the decree made, in the absence of such party, have no injurious effect on the interest of such absent party?

Answer: The right and interest of a party in and to the beneficial consumptive use of the waters in question are interrelated to the rights and interest of all other parties to the same waters. Any adjudication and determination of those rights and interest will injuriously affect the right and interest of the absent party.

(4) Will the final determination, in the absence of such party, be consistent with equity and good conscience?

Answer: No. Litigation must come to an end. Courts certainly do not approve or sanction interminable litigation where most material issues with respect to valuable and vital rights and interests are the subject matter of the case and where an indispensable party in interest is available, any final determination of the like interest of the parties presently before the Court having an interest in a common fund, i.e., the waters the subject of the instant case,

leaving the interest of the absent party undetermined, would not be consistent at all with equity and good conscience.

Nevada respectfully submits that New Mexico and Utah are indispensable parties.

The States of Colorado and Wyoming are Necessary, If Not Indispensable, Parties

Aside from the grounds set forth in California's motion to make Colorado and Wyoming parties in the instant case, and aside from California's reasons that such States are necessary parties, Nevada submits that such States are necessary, if not, in fact, indispensable parties for the following reasons.

Notwithstanding the provisions of Section 4 (a), Boulder Canyon Project Act, pursuant to which the California Limitation Act was enacted whereby it is claimed the signatory States to the Colorado River Compact became third party beneficiaries, the Boulder Canyon Project Act in Section 4(a) provides that uses of the waters of the Colorado River for the purposes in said section set forth shall always be subject to the terms of the Colorado River Compact.

Neither Sections 4(a) of the Project Act nor the California Limitation Act contains any reference whatever to Article III(b) of the Compact. Nevada reiterates that Article III(a) of the Compact apportions to the Upper and Lower Basins respectively, in perpetuity 7,500,000 acre-feet of water per annum; that in addition to such apportionment in Paragraph (a), the Lower Basin was given the right to increase its beneficial consumptive use of such water by 1,000,000 acre-feet per annum, in Paragraph (b) of said Article.

Long ago in 1934, this Court had before it the case of *Arizona vs. California, Colorado, Nevada, New Mexico, Utah, Wyoming, the Secretary of the Interior, et al. 292 U.S.341*, where Arizona sought to enjoin the defendants from carrying out the provisions of the Colorado River Compact and/or the Boulder Canyon Project Act. Justice Brandeis delivered the opinion of the Court. With

respect to Article III(b) of the Compact, it is most apropos that the language of the Court be here quoted:

> Nor does Arizona show that article III(b) of the compact is relevant to an interpretation of section 4(a) of the Boulder Canyon Project Act upon which she bases her claim of right. It may be true that the Boulder Canyon Project Act leaves in doubt the apportionment among the states of the lower basin of the waters to which the lower basin is entitled under article III(b). But the act does not purport to apportion among the states of the lower basin the waters to which the lower basin is entitled under the compact. The act merely places limits on California's use of waters under article III(a) and of surplus waters; and it is "such" uses which are "subject to the terms of said compact."
>
> There can be no claim that article III (b) is relevant in defining surplus waters under section 4 (a) of the act; for both Arizona and California apparently consider the waters under article III (b) as apportioned. It is true that Arizona alleges (not in the bill however but in her brief) that she "hopes to be able to show in the case hereafter to be brought" by evidence of Congressional Committee hearings and other legislative history that the failure in the statute to apportion the 1,000,000 acre-feet of waters was due to an understanding by Congress that article III (b) of the compact had already assigned these waters to Arizona; and that the limitation on California was passed in the light of this understanding. This hope, if fulfilled, would not make article III (b) relevant. The allegation is, not that Congress incorporated article III (b) into the act, it is that Congress understood that article III (b) had allotted all the waters therein to Arizona.
>
> The considerations to which Arizona calls attention do not show that there is any ambiguity in article III (b)

of the compact. Doubtless the anticipated physical sources of the waters which combine to make the total of 8,500,000 acre-feet are as Arizona contends, but neither article III (a) nor (b) deal with the waters on the basis of their source. Paragraph (a) apportions waters "from the Colorado River system," i.e., the Colorado and its tributaries, and (b) permits an additional use "of such waters." The compact makes an apportionment only between the upper and lower basin; the apportionment among the states in each basin being left to later agreement. Arizona is one of the states of the lower basin, and any waters useful to her are by that fact useful to the lower basin. But the fact that they are solely useful to Arizona, or the fact that they have been appropriated by her, does not contradict the intent clearly expressed in paragraph (b) (nor the rational character thereof) to apportion the 1,000,000 acre-feet to the states of the lower basin and not specifically to Arizona alone. It may be that, in apportioning among the states the 8,500,000 acre-feet allotted to the lower basin, Arizona's share of waters from the main stream will be affected by the fact that certain of the waters assigned to the lower basin can be used only by her; but that is a matter entirely outside the scope of the compact.

The provision of article III (b), like that of article III (a), is entirely referrable to the main intent of the compact, which was to apportion the waters as between the upper and lower basins. The effect of article III (b) (at least in the event that the lower basin puts the 8,500,000 acre-feet of water to beneficial uses) is to preclude any claim by the upper basin that any part of the 7,500,000 acre-feet released at Lee Ferry to the lower basin may be considered as "surplus" because of Arizona waters which are available to the lower basin alone.

It is submitted that there can be no question but that Article III (b) constitutes an apportionment of the waters of the Colorado Stream System to the beneficial consumptive use in and by the Lower Basin States of an additional 1,000,000 acre-feet of water per annum, and that this additional amount of water comes from the stream system as a whole, with the major portion thereof provided in and by the flow of the river in and from the Upper Basin States. Certainly it cannot be gainsaid that the Upper Basin States are not interested in whether the Lower Basin has perfected its right to have the additional 1,000,000 acre-feet of water applied to beneficial consumptive use. Such use will of necessity affect the beneficial use of waters apportioned the Upper Basin when called upon to deliver at Lee Ferry all or the major portion thereof. The III (b) water, it is submitted, cannot be deemed surplus water by any Upper or Lower Basin State. It is apportioned water, dedicated to the beneficial consumptive use in the Lower Basin States, and by reason thereof, is of such character as to be interrelated with the rights and interest of the Upper Basin States in the common fund, the waters of the Colorado River Stream System, which said interest cannot on the part of any State signatory to the Colorado River Compact, be deemed severable.

Nevada respectfully submits that Colorado and Wyoming at the very least, are necessary parties herein.

Dated: February 1, 1955.

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entirety from the main stream, *i.e.*, from the waters flowing from the four absent States. (Initial California Brief on pending motion, pp. 32-35)

2. That this apportionment by Article III(a) to the Lower Basin is identical with the 75,000,000 acre-feet which the four States are required by Article III(d), of the Compact to let pass Lee Ferry in each ten-year period. The absent States, accordingly, are entitled to no credit against the Mexican Treaty burden with respect to any of that 75,000,000 acre-feet, but are obliged, under Article III(e), to let down additional water to meet one-half of the Treaty burden. (*Ibid.*)

3. That the 1,000,000 acre-feet of "increase of use" permitted to the Lower Basin by Article III(b) of the Compact is apportioned in perpetuity to the Lower Basin, and the right thereto, as against the Upper Basin, is not dependent upon any actual increase in use. (*Id.* at 45-46)

4. That no State may acquire any right in unallocated waters by contract, appropriation or use, but only by virtue of some possible later compact among the seven States under Articles III(f) and III(g) of the Colorado River Compact. This would require Arizona's consent. (*Id.* at 43-45)

5. That the 3,800,000 acre-feet claimed by Arizona is net of all "salvaged" waters; she may use another 1,000,000 or more acre-feet of salvaged water without any charge at all, either to the Lower Basin's allocation under the Colorado River Compact, or to surplus water available for the Mexican Treaty. (*Id.* at 39-41)

6. That consumptive use of water is to be measured, not in terms of the quantities in fact consumed in growing crops or by domestic uses, but in terms of the resulting depletion of the virgin flow of the main stream. (*Id.* at 36-39)

7. That reservoir losses are to be charged against the apportionments made by Article III(a) of the Colorado River Compact. (*Id.* at 46-47)

8. That Arizona effectively ratified the Colorado River Compact, converting it to a seven-state Compact. (*Id.* at 58-59)

9. That the Statutory Compact, although in terms enacted as an accompaniment only to a six-state Compact, continues as an accompaniment of the seven-state Colorado River Compact. (*Ibid.*)

One or more of the present parties—California, Nevada and the United States—disagrees with Arizona on each of these points. Each of these issues involves rights and obligations of the absent States.

2. Briefs Opposing the Motion

The briefs of the absent States opposing the pending motion are notable because in almost no particular do they deny facts or contentions relied on by California in the pending motion and supporting brief. None of the four absent States denies that the controversy turns on disputes, which California's previous brief lists, over construction of the Compacts and Statutes. None of the four absent States denies that its rights

and obligations would necessarily be affected by a resolution of these disputes. None of the four States denies that it is a party to the Colorado River Compact and a joint-obligee of the Statutory Compact. None of the four States offers any authority to controvert the universally accepted proposition that joint obligees are indispensable, and, *a fortiori,* necessary parties.

Neither New Mexico nor Utah denies that she has rights in an undetermined share of a "common fund" of water available to the States with territory in the Lower Basin of the Colorado River System. Neither New Mexico nor Utah cites any authority to controvert the universally accepted proposition that claimants to a share in a common fund are indispensable and, *a fortiori,* necessary parties to a suit to determine rights in the fund.

Principal reliance of the four States in opposing the motion rests on two contentions, neither of which is supported by reason or authority. The first contention is that the usual rules for determining necessary parties do not apply to actions between States. The second contention is that because, or so the absent States claim, there is no present use of water in the Upper Basin which conflicts with uses in the Lower Basin, the controversy between present parties and the absent States is not presently justiciable. This brief will show that both contentions are unsound. The rules of compulsory joinder apply with equal force to States and to private litigants. An independently justiciable controversy between present parties and absent parties is not a requirement for compulsory joinder of the absent

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IN THE

Supreme Court of the United States

October Term, 1954

No. 10 Original.

STATE OF ARIZONA, *Complainant,*

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA; CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, *Defendants.*

UNITED STATES OF AMERICA, *Intervener,*

STATE OF NEVADA, *Intervener.*

Reply Brief of the California Defendants in Support of Their Motion to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming

(See List of Attorneys on Inside Cover)

parties. Even if an independently justiciable controversy were required, the motion should nevertheless be granted because Arizona's complaint states a controversy which, if justiciable as to present parties, is no less justiciable against the absent States.

ARGUMENT

I.

THE FACT THAT THIS SUIT IS BETWEEN STATES OR THAT THE SUIT IS WITHIN THE ORIGINAL JURISDICTION OF THE SUPREME COURT IS NO REASON FOR DISREGARDING THE USUAL AND PRESCRIBED RULES FOR DETERMINING NECESSARY PARTIES

Rule 9(2) of the Revised Rules of the Supreme Court, effective July 1, 1954, provides that the Federal Rules of Civil Procedure, "where their application is appropriate, may be taken as a guide to procedure in original actions in this court." Rule 19(b) of the Federal Rules provides that necessary parties are those "who ought to be parties if complete relief is to be accorded between those already parties."

New Mexico says that Rule 19 "is not applicable or appropriate in this case." (New Mexico Brief, p. 5.) The brief of Colorado and Wyoming and the brief of Utah are less explicit, but in their insistence that different criteria apply because states are to be made parties, their arguments take a similar position. Succinctly stated, the New Mexico position is: That in original actions in the

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IN THE

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October Term, 1954

No. 10 Original.

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vs.

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UNITED STATES OF AMERICA, *Intervener*.

STATE OF NEVADA, *Intervener*.

Reply Brief of the California Defendants in Support of Their Motion to Join, as Parties, the States of Colorado, New Mexico, Utah, and Wyoming

STATUS OF MOTION TO JOIN COLORADO, NEW MEXICO, UTAH, AND WYOMING

On July 15, 1954, the State of California and the other California defendants filed in this Court a motion to join, as parties to this action, the States of Colorado, New Mexico, Utah, and Wyoming. On August 13, 1954, Arizona filed a response in

opposition. On October 7, 1954, the California defendants filed a brief in support of their motion. That brief includes a detailed statement of the case. On December 27, 1954, briefs opposing the motion were filed individually by New Mexico and Utah and jointly by Colorado and Wyoming. Both New Mexico and Utah expressly adopt the joint brief of Colorado and Wyoming. On February 7, 1955, Nevada filed a brief in support of the Motion.

1. Grounds for the Motion

This suit was initiated on the complaint of Arizona. Arizona seeks a decree quieting her claimed title and establishing her alleged rights to the annual beneficial consumptive use of specified quantities of the water of the Colorado River System. The California defendants have traversed the complaint and, in affirmative defenses, have set up claims to the annual beneficial consumptive use of water which are inconsistent with the claims of Arizona. Nevada and the United States, both interveners, have asserted claims inconsistent with those of both plaintiff and defendants.

Issues which must be determined in resolving the controversy between the present parties fall into three closely related categories:

(1) The meaning and effect of the Colorado River Compact to which States opposing this motion are parties.

(2) The meaning and effect of a Statutory Compact between the United States and California of which the States opposing this motion are, like

Arizona and Nevada, third party beneficiaries. The Statutory Compact (evidenced by the Boulder Canyon Project Act and the California Limitation Act) incorporates by reference terms and provisions of the Colorado River Compact, involves interpretations of the Boulder Canyon Project Act, and must be construed *in pari materia* with the Colorado River Compact and the Project Act.

(3) The quantity of water legally and physically available for beneficial consumptive use in the Lower Basin of the Colorado River from the Colorado River System. This involves questions of fact and questions of law, including the meaning and effect of the Colorado River Compact, the Statutory Compact, the Boulder Canyon Project Act, the Mexican Water Treaty, water delivery contracts, statutes, and laws upon which the present parties predicate their claims.

The determination of these claims requires a determination of the amount of the water that is available to the Lower Basin. Most of this water comes from the Upper Basin. Arizona's quiet title action thus operates against the rights of the absent States as well as against the rights of the present parties.

A decree in Arizona's favor would presuppose the following determinations of the rights and obligations of the absent States:

1. That the apportionment of the use of 7,500,000 acre-feet per annum made by Article III(a) of the Colorado River Compact to the Lower Basin is not to be charged with the uses made from Lower Basin tributaries, but may be claimed in its

Supreme Court, *additional parties* will not be joined even though they "ought to be parties if complete relief is to be accorded between those already parties." The position of the other three States is similar: That *states* will not be joined even though they "ought to be parties if complete relief is to be accorded between those already parties."

Of course there is no authority for such propositions. The law of necessary parties has been shaped by considerations that apply irrespective of the forum for trial or the nature of the parties. Rule 19 merely recognizes and codifies a rule of federal practice which had previously existed. (See authorities cited in the initial California brief on this motion, page 28.) This Court, in the exercise of its original jurisdiction, has consistently cited and applied the rules of necessary and indispensable parties first developed in cases heard on appeal from lower federal courts. See *California* v. *Southern Pacific Co.*, 157 U.S. 229 (1895); *Minnesota* v. *Northern Securities Co.*, 184 U.S. 199 (1902); *New Mexico* v. *Lane*, 243 U.S. 52 (1917); *Arizona* v. *California*, 298 U.S. 558 (1936). A leading and frequently quoted decision in which a judgment was reversed for failure to join a necessary party is *State of Washington* v. *United States*, 87 F.2d 421 (9th Cir. 1936). In that case the absent necessary party was a state. In none of these cases has there been the slightest suggestion that different rules or different considerations apply because the case is within the original jurisdiction of this Court or because the party sought to be joined is a State.

Recently, in the pending case of *Texas* v. *New Mexico*, this Court ordered the Special Master to hear evidence on the indispensability of the United States, and to report to the Court on the issue. 344 U.S. 906 (1952). Since no special instructions were given to the Master, it is apparent that the Court expected him to apply the traditional rules of compulsory joinder. The report of the Special Master does not suggest that he departed from the classic formula in considering the question. (Report of Special Master, *Texas* v. *New Mexico*, No. 9 Original, October Term, 1953.)

Utah concedes that the numerous decisions cited in California's initial brief hold "that in actions upon contracts, decrees construing the terms thereof cannot be entered unless all parties thereto are present in the action." She cites no decision to the contrary, but would limit the effect of the decisions to "their own peculiar set of facts." (Utah Brief, p. 7.) No decision, she says, has applied the rule with respect to compacts in litigation between states. On this view, apparently, all cases between states are unique. The fact is that if Rule 19 and the principle it adopts are inapplicable to this case, the motion must be decided in a legal vacuum, because no other body of precedents or principles exists.

Of the reasons for the rules of necessary parties, the States opposing the pending motion say nothing.

So firmly established is the rule where rights of joint obligees are involved that the rule has become recognized as not only a rule of procedure,

but a part of the substantive law of contracts. The Restatement of Contracts, Section 129 (1932) states it thus:

> An action to enforce a joint right under a contract must be brought by or in the name of all surviving obligees.
>
> *Comment: a.* The persons having a joint right will generally be promisees, but where third party beneficiaries are allowed to enforce a promise, the joint right may be that of such beneficiaries.

For this rule there are at least three reasons. These reasons are: (1) to avoid multiplicity of suits and the unjustified harassment of an obligor; (2) to avoid inconsistent judgments in successive actions involving the same promise; and (3) to avoid a hollow or unenforceable judgment.

All three considerations apply to the present suit. In the first place, a decree based upon the two Compacts which are in dispute—the Colorado River Compact and the Statutory Compact—will be only a prelude to further controversy and litigation if the decree does not bind all the parties with rights under both Compacts.

In the second place, a decree quieting title in present parties without binding the absent States would be a precarious basis for future expansion and development; there would be continuing concern that a later suit might determine that the decree was based on an overly generous assumption about the amount of water available to the Lower Basin as against the Upper Basin.

Thirdly, a decree construing the Compacts and statutes constituting the "Law of the River," and which binds only three of the seven Colorado River Basin States, simply will not work. It will create the possibility of two Colorado River Compacts, each purporting to apply to the whole River.

This, however, is the result for which the absent States argue. They do not and cannot deny that their rights and obligations are controlled by the Compacts in dispute. They do not deny that the effect of these Compacts must be determined —as to the present parties—in this suit. They say only that the effect of the Compacts, as to them, must be left to future litigation.

Denial of the motion on this basis would be unfair to the defendants because it might involve them in later litigation over the same rights and obligations now in dispute. Denial of the motion on this basis would harm interests within the entire Colorado River Basin because it would prevent an early determination of issues which must be decided before the resources of the Basin can be developed. Denial of the motion on this basis would result in abuse of the processes of this Court, because any decree would be empty and ineffectual if but three of seven affected States were bound.

Only two decisions cited in the briefs opposing the pending motion concern the problem of necessary parties. *Nebraska* v. *Wyoming*, 295 U.S. 40 (1935), and 296 U.S. 553 (1935). The opposing briefs draw an erroneous conclusion

from the first; they are inaccurate with respect to the second.

Both decisions were in the early stages of *Nebraska* v. *Wyoming*, 325 U.S. 589 (1945), which started as a suit by Nebraska against Wyoming over rights to the use of the water of the North Platte River. Wyoming first moved to dismiss Nebraska's Bill of Complaint on the ground that Colorado was a necessary and indispensable party. The Court denied the motion on the ground that the complaint showed no claim by Colorado to rights to the diversion and use of the North Platte. The complaint said only that the North Platte originates in Colorado. 295 U.S. 40 (1935).

Some eight months later, the Court unanimously and without opinion ordered that Colorado be made a party "in accordance with the prayer of the amended and supplemental answer of the State of Wyoming." 296 U.S. 553 (1935). Colorado and Wyoming (page 27) and Utah (page 10) state in their briefs opposing the pending motion that this action was on the basis of an amended complaint by Nebraska alleging out-of-priority diversions depriving Nebraska of water to which she was equitably entitled.

These statements are incorrect. At the time of the decision making Colorado a party, entered December 23, 1935, Nebraska had not amended her complaint and did not do so until, in effect, by replication filed June 12, 1936. As the Court's order clearly indicates, its basis was Wyoming's Amended and Supplemental Answer. That Supplemental Answer, so far as it dealt with Colorado's actions, alleged no present injury by Colorado but recited only contemplated

and threatened diversions by Colorado of waters which were the subject matter of the dispute between Nebraska and Wyoming.[1]

"TWENTIETH

[1] "Defendant says that a portion of the head-waters of the North Platte River are located in the State of Colorado and that approximately thirty per cent of the waters of said river available for use in Nebraska and Wyoming originates in Colorado. Complainant, in this suit, seeks a decree determining the rights of Nebraska and Wyoming to the use of the waters of said river. And defendant says that the waters to be apportioned in this action must, of necessity, involve the waters, extensive in amount, rising in the State of Colorado. Defendant says that the respective rights of Colorado and Wyoming to the use of the waters of the North Platte River have never been determined as between said states, and that the State of Colorado and its citizens now contemplate and for a long time have contemplated and threatened and now threaten the diversion and use in Colorado of waters of the North Platte River, which diversion and use would have the effect of taking from the North Platte River a large quantity of water, to-wit, upwards of 250,000 acre feet per annum, all which water now flows in the channel of the North Platte River into the State of Wyoming, and will of necessity be the subject matter pro tanto of the determination of the rights in this action of the present parties.

"Defendant says that if the present suit is permitted to proceed without making the State of Colorado a party, defendant will be subjected to further litigation with the State of Colorado and its appropriators, involving the waters of the North Platte River which constitute the subject matter of this suit. And defendant says that a proper and equitable allocation of the waters of the North Platte River, as complainant well knows, cannot be made between the present parties upon any equitable basis without at the same time determining the rights, whatever they may be, of the State of Colorado and of its appropriators in said waters. And

(*Footnote Continued on Next Page*)

defendant says that the State of Colorado is a necessary and indispensable party to this action.

* * *

"TWENTY-SECOND

"Defendant says that in 1923 the States of Nebraska and Colorado negotiated and executed what is called the 'South Platte River Compact" between said states, which Compact was later duly approved by the legislatures of said respective states and by the Congress of the United States; that the South Platte and the North Platte Rivers, by their junction at or near the City of North Platte, Nebraska, form the Platte River; and that said Compact distributes and apportions between Colorado and Nebraska the waters of the South Platte River without regard to and without providing for the supply of any waters from the South Platte River for the use of prior appropriators on the Platte River. Defendant says that the effect of said Compact was to relieve the waters of the South Platte River from any and all obligation to contribute to the supply of the waters of the Platte River required for the satisfaction of rights out of the Platte River. And defendant says that in the division of the waters to which the parties hereto may be found by the court to be equitably entitled due regard should be had to the burden which, but for the said South Platte River Compact, would exist and rest upon the South Platte River to contribute its just proportion to the waters required to satisfy appropriators from the Platte River.

"And defendant says that because of the matters in this article alleged the State of Colorado is a necessary party to this action and to a final determination of the rights of the parties herein.

"WHEREFORE, defendant prays that this court issue its subpoena to the State of Colorado and its Governor and Attorney General, directing that appearance be made by said state before this court at a time to be fixed in said subpoena, and requiring it by an appropriate pleading to show its and its appropriators' interests in the water of the North Platte and South Platte Rivers; that upon final hearing this court find and determine the equitable share of the water of the North Platte River to which the State of Colorado, this defendant and the complainant are respectively en-

(*Footnote Continued on Next Page*)

The opinion on the merits in *Nebraska* v. *Wyoming*, 325 U.S. 589 (1945), is quoted in both the Colorado and Wyoming Brief (page 27) and in the Utah Brief (page 9) for the apparent pur-

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titled; and that the prayer of complainant's Bill of Complaint be denied except to the extent that this defendant has joined therein. And defendant prays for such further, other and different relief as to the court may seem just and equitable."

From Wyoming's Amended and Supplemental Answer filed December 12, 1935.

Nebraska's objections to filing Wyoming's Amended and Supplemental Answer unless Article Twentieth and the Prayer as it related to Colorado were stricken are also instructive. These objections, filed December 13, 1935, may be summarized as follows:

1. The Court had decided on April 1, 1935, that Colorado was not a proper party because Nebraska had asserted no wrongful act of nor asked any relief against Colorado.

2. "Said allegations [Article twentieth] seek to import into this controversy an issue which is extraneous thereto, and foreign to any issue between the State of Nebraska and the State of Wyoming . . . ." (p. 2.)

3. Neither legal nor equitable relief was asked against Colorado.

4. Wyoming's pleading was not a Cross-Bill.

5. The attempt at joinder was made too late.

6. No change had occurred in the subject matter of the controversy.

7. The addition of another party would delay the proceedings.

8. The matter had already been referred to a Special Master and no application was made to enlarge the scope of his reference.

The substance of many of these objections has been raised by the Upper Basin States against the present motion.

pose of showing that allegations of present damage by Colorado uses were the basis of the Court's order making Colorado a party. The implication is that without such allegations a state is not a necessary party. The fact is, however, that *such allegations had not been made when Colorado was ordered into the suit.* The quotations in the opposing briefs from the 1945 opinion are responsive to *Colorado's* motion to dismiss, a motion which was first made after the Master had proceeded on the merits and had heard Nebraska's case. *Nebraska v. Wyoming*, 325 U.S. at 592. Colorado was not seeking dismissal on the ground that she was not a necessary or proper party, but on the ground that a case for a decree against Colorado had not been established. The joinder issue, raised by the defendant Wyoming, and which had resulted in impleading Colorado as a party defendant, had been disposed of a decade earlier.

The two 1935 decisions in *Nebraska v. Wyoming* are pertinent for three reasons: (1) They are the only instances where this Court has had occasion to rule, in the exercise of its original jurisdiction, on the question of compulsory joinder of States. (2) Wyoming's allegation of threatened harm, quoted in the footnote on page 13, was sufficient basis to require compulsory joinder. (3) This Court gave no indication in deciding the issue of necessary parties that the usual rules do not apply.

The case now before the Court is much stronger than the second *Nebraska v. Wyoming* decision for the joinder of absent States. In addition to factors almost identical, the present litigation embraces the determination of rights and liabilities under

the Colorado River Compact, to which all the absent States are parties, and the Statutory Compact of which they are all third party beneficiaries. The Court must decide issues under these Compacts which vitally affect the absent States.

Two other points raised by the absent States in opposition to joinder may be disposed of briefly.

New Mexico states as one reason for her objection to being joined as a party that "It is not contended by California that the four states of the Upper Division are 'indispensable' parties in the sense that the case may not proceed without them." (Pages 5-6) The issue of indispensability of parties arises only when parties sought to be joined are without the jurisdiction of the Court, or when joinder would deprive the Court of jurisdiction. Neither condition prevails here. Any determination that the absent States are indispensable would be outside the issues presented by the motion. However, the absent States would be indispensable if indispensability were in issue. (Initial California Brief, p. 30.) *A fortiori*, they are necessary parties.

The other contention, as stated in the Utah Brief, is that "This is not an action based primarily upon the [Colorado River] Compact." (Page 6.) Similarly, the Colorado and Wyoming brief develops the contention that, because the Colorado River Compact divides the use of water between the Upper and Lower Basins, and not among States, the Upper-Basin States are not necessary parties to a suit over the use of Lower Basin water. To this there are three answers:

(1) The issues raised in the Arizona Complaint necessarily involve construction of provisions of the Colorado River Compact, the resolution of which necessarily will affect the rights and obligations of the Upper Basin States under the Compact. The Court must determine the respective rights in water available for use in the Lower Basin. But to do so it must first determine how much water is available to the Lower Basin under the terms of the Colorado River Compact. The size of the pie must be determined before deciding how the pie will be cut. This cannot be done without adjudicating the corresponding rights and obligations of the Upper Basin States.

(2) Arizona's complaint, as her complaint shows, alleges a breach by California of its obligation under the Statutory Compact. The States opposing this motion are third-party beneficiaries of that Compact and must be joined in the action brought by Arizona as joint obligee.

(3) Because claims of the United States are asserted independently of the Colorado River Compact, they are necessarily claims against the Colorado River System as a whole.

The States opposing the pending motion do not deny that the questions of interpretation of the Colorado River Compact, analyzed in detail in California's initial brief on the motion, are involved in the present controversy. They do not deny that they are joint obligees, with Arizona and Nevada, of the Statutory Compact. They do not deny that a determination of issues which must be decided in the suit among the present parties

necessarily affects their rights and obligations. Were private individuals or corporations situated as the absent States are with reference to the present litigation, their joinder would clearly be necessary. That the absent parties are States provides no reason for changing the rules.

II.

AN INDEPENDENTLY JUSTICIABLE CONTROVERSY BETWEEN PRESENT PARTIES TO THE SUIT AND THE FOUR ABSENT STATES IS NOT REQUIRED FOR THEIR JOINDER

The four absent States argue that they cannot be joined as parties unless an independently justiciable controversy exists between them and the present parties. This the California defendants deny. If there is a justiciable controversy among the parties now before the Court, the absent States must be joined because, in the language of Rule 19(b) of the Federal Rules of Civil Procedure, they "ought to be parties if complete relief is to be accorded between those already parties."

The tests of compulsory joinder have been developed by the federal courts without any suggestion that a separately justiciable controversy is required as to parties sought to be joined.[1] Federal

[1] Only one case has been discovered which expressly discusses a concept of "justiciable controversy" in the context of compulsory joinder: *Samuel Goldwyn, Inc.* v. *United Artists Corp.*, 113 F.2d 703 (3d Cir. 1940). In that case, the court said that the parties sought to be joined were neither necessary nor indispensable because their legal inter-

Rule 19 makes no such requirement. To superimpose a requirement of an independently justiciable controversy as to parties sought to be joined would undermine the strength of those rules and the sound judicial policy on which they are based—to fully and effectively dispose of a case or controversy before the court.

The only requirement for justiciability which the absent States argue is lacking is that which may best be described as "ripeness for judicial determination." The requirement is based on a number of considerations: avoiding decision of a feigned controversy, avoiding decision where only abstract questions are presented, avoiding

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ests would not be affected. Hence, reasoned the court, issues as to the third parties were not "cognizable" or "justiciable." The court was unquestionably correct in its view that parties whose legal interests could not be affected by any possible judgment or decree should not be joined. In the present case, however, legal interests of the absent States clearly would be affected by any decree that is entered. This the absent States do not deny. Their only contention is that issues as to them are not yet ripe for judicial determination, and hence do not now constitute a "justiciable controversy." This is completely different from the concept of "justiciable controversy" in the *Goldwyn* case where the term was used to mean "affecting legal interests." The sense in which the court in the *Goldwyn* case used "justiciable controversy" is made clear by the manner in which it distinguished three leading Supreme Court decisions on compulsory joinder, all three of which are cited in the initial California brief: *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U.S. 77 (1920); *Minnesota* v. *Northern Securities Co.*, 184 U.S. 199 (1902); *Northern Indiana R.R.* v. *Michigan Central R.R.*, 15 How. 233 (U.S. 1854). The court in the *Goldwyn* case distinguished each of these three cases on the ground that the legal interests of the absent parties (as in present case) would have been materially affected.

decision of a controversy that may never require determination. See *Public Service Comm'n of Utah* v. *Wycoff Co.*, 344 U.S. 237 (1952). Where issues not ripe for decision in a separate and independent suit against absent parties must in any event be determined in a controversy between other parties which is justiciable, the reasons behind the "ripeness" rule do not militate against compulsory joinder. The controversy between those already parties insures the necessary "concrete" and "immediate" clash of interests, and avoids all of the hazards which courts have tried to avoid in delimiting the "ripeness" requirement for a justiciable controversy.

The point could be illustrated by many examples from the present suit. One of the issues between present parties is the definition of "beneficial consumptive use" in the Colorado River Compact. If the absent States are right, a separate suit by or against them would not now be sufficiently concrete for adjudication. However, because the beneficial consumptive use issue will be determined in the present suit in any event, all the reasons for the ripeness requirement are satisfied. To say that parties who cannot sue or be sued cannot be joined to another suit is to say, in effect, that the Colorado River Compact must be construed, not by one decree, but by two, separated in time by thirty years or so. If ever there were a situation which demanded the opposite result, this is it.

Many federal cases indicate, without expressly discussing the problem, that a separately justiciable controversy is unnecessary to a determination that absent parties are necessary or indispensable:

Minnesota v. *Northern Securities Company*, 184 U.S. 199 (1902). The State of Minnesota brought an original action to enjoin the Northern Securities Company from acquiring the stock of and exercising control over two parallel and competing railroads in Minnesota. There was no cause of action against the railroads and no relief against them was sought. Moreover, there was no controversy between the railroads and the Northern Securities Company. Nevertheless, they were held to be indispensable parties because their rights necessarily would have been affected by the litigation.

Northern Indiana Railroad v. *Michigan Central Railroad*, 15 How. 233 (U.S. 1854). The complainant sought to enjoin the defendant from infringing plaintiff's franchise by constructing and operating a certain railroad line. Defendant claimed a right to construct the road by reason of its contract with a third railroad, New Albany. Although there was no cause of action apparent between the New Albany railroad and the original parties to the action, the Court held that New Albany was indispensable because the validity of its franchise and its contract with the defendant Michigan Central necessarily would be determined.

Mallow v. *Hinde*, 12 Wheat. 193 (U.S. 1827). The action involved a dispute over the ownership of real property. The plaintiff's title was based on a contract executed by the beneficiary of a trust, and the defendant claimed a title based on a contract executed by the trustee. Because the validity of these contracts necessarily would have to be determined, both the beneficiary and the trustee were held to be indispensable. There was no indi-

cation of a presently justiciable controversy between them and the original parties.

Keegan v. Humble Oil & Refining Company, 155 F.2d 971 (5th Cir. 1946). The validity of an oil lease was in issue. Owners of royalty interests under the lease were held to be indispensable even though no present cause of action existed between them and the original parties. They were indispensable because their legal interests necessarily would have been affected by the litigation. Cancellation of the lease would have destroyed their royalty interests in the lease.

That an independently justiciable controversy is not required as to all parties is even more clearly demonstrated in a series of cases involving declaratory judgment actions on liability insurance policies. There is abundant authority that insurance companies in suing the insured for a declaratory determination of non-liability must join the injured party even though the liability of the insured to the injured party has not been established, and will not be established in the declaratory judgment action. *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270 (1941); *Central Surety & Ins. Corp. v. Norris*,[1] 103 F.2d 116 (5th Cir. 1939); *Central Surety & Ins. Corp. v. Caswell*,

[1] The court in reversing the judgment which dismissed third party tort claimants said: "The interest of Ruddell and Rosser [the tort claimants] in the question the Insurance Corporation is trying to get adjudicated by a declaratory judgment is real and substantial though not immediate. They ought to be retained as parties to be heard on it and to be bound by the result." 103 F. 2d at 117.

91 F.2d 607 (5th Cir. 1937).[1] This is so even though the injured party has no action against the insurance company until the insured's liability is established.[2]

The principle that an independently justiciable case or controversy is unnecessary as to all parties is firmly established in cases involving intervention. In *Securities and Exchange Commission* v. *United States Realty & Improvement Company*, 310 U.S. 434 (1940), the Court permitted the SEC to intervene to contest the propriety of a Chapter XI bankruptcy proceeding even though there was no basis for any independent action involving the SEC. There was a dissenting opinion which was confined to issues of statutory construction; the Court's constitutional power was not even discussed. See CLARK, CODE PLEADING, Sec. 65 (2d ed. 1947); Berger, *Intervention by Public Agencies in Private Litigation in the Federal Courts*, 50 YALE L. J. 65 (1940).[3]

[1] "[W]e assume the District Court reached the conclusion that a case of actual controversy between the insurer and the passengers was not presented and therefore as to them the court was without jurisdiction. . . . The injured passengers have a material interest in the outcome of the suit. Appellant has the right to have its obligations to them as well as the insured determined. The passengers are necessary and proper parties. The judgment dismissing the suit as to them was wrong." 91 F.2d at 608-09.

[2] In a few states direct action statutes permit injured parties to sue insurance companies directly. See *Watson* v. *Employers Liability Assurance Corp.*, 348 U.S. 66 (1954). Comment, *Consent and the Constitution*, 5 STAN. L. REV. 514 (1953).

[3] Compare 28 U.S.C. § 2403 (1952) which requires the court to allow the United States to intervene in any action

Although the tests of permissive intervention and compulsory joinder differ, any constitutional requirement of an independently justiciable controversy would necessarily apply with equal force to both situations. If the absence of an independently justiciable controversy is no bar to intervention, it is no bar to compulsory joinder. That there is any constitutional barrier to intervention by the absent States in the present litigation is inconceivable. Nevada, a Lower Basin State, has already been granted permission to intervene in the present action. *Arizona* v. *California*, 347 U.S. 985 (1954). This leaves no doubt that New Mexico and Utah, also Lower Basin States, could intervene. The present suit is the fourth interstate suit involving the Colorado River, and it is the first in which all seven States of the River Basin were not initially named as parties. *Arizona* v. *California*, 283 U.S. 423 (1931); 292 U.S. 341 (1934); 298 U.S. 558 (1936).

The foregoing authorities demonstrate that a separately justiciable case or controversy is not necessary between all parties before a federal court. Once a court has a justiciable case or controversy before it, the judicial power granted by Article III of the Constitution of the United States includes the power to deal with all issues and parties necessary to an effective disposition of the case. Chief Justice Marshall said in *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 823 (U.S. 1824):

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involving the constitutionality of a statute of the United States affecting the public interest. See *United States* v. *Johnson*, 319 U.S. 302 (1943).

> We think, then, that when a question to which the judicial power of the Union is extended by the constitution, forms an ingredient of the original cause, it is in the power of congress to give the circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it.

The principle is at the basis of the familiar doctrine of ancillary jurisdiction. Merely to catalogue instances in which the principle has been applied would require a treatise on the jurisdiction of federal courts. See 3 MOORE, FEDERAL PRACTICE, Pars. 13.15, 14.26 (2d ed. 1948); HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM (1953): *Note on Pendent Jurisdiction*, pp. 802-809; *Note on Class Actions and Intervention*, pp. 929-937; *Note on Third-Party Practice*, pp. 942-943; *Note on Separate and Independent Claims or Causes of Action*, pp. 1044-1048.[1]

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[1] A few illustrative cases are *Brooks* v. *United States*, 119 F.2d 636 (9th Cir.), *cert. denied*, 313 U.S. 594 (1941) (federal district court in Arizona may decide rights in waters of Gila River in New Mexico incidental to a determination of water rights in Gila River in Arizona, although there is no independent jurisdictional basis for a determination of the rights in New Mexico); *Phelps* v. *Oaks*, 117 U.S. 236 (1886) (jurisdiction based on diversity of citizenship retained after the intervention of a party who destroyed complete diversity); *Stewart* v. *Dunham*, 115 U.S. 61 (1885) (class action removed to federal court because of diversity; jurisdiction retained after intervention of a member of the class of same citizenship as defendant); *Hurn* v. *Oursler*, 289 U.S. 238 (1933) (federal claim for copyright infringement joined with state claim for unfair competition; jurisdiction over the federal claim held to include the power to decide the state claim); *Siler*

If this Court were to decide that an independently justiciable controversy were required in order to join additional parties, it would add a new and uncertain qualification to present rules of joinder. Such a qualification resting on constitutional grounds would import uncertainty as to jurisdiction into all multi-party situations. Denial of the motion on this ground would undermine the salutary principle that the power to decide a case is the power to decide it completely.

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v. *Louisville & Nashville R.R.*, 213 U.S. 175 (1909) (jurisdiction based on federal question, but case disposed of on issue of state law); *Moore* v. *New York Cotton Exchange*, 270 U.S. 593 (1926) (federal court has ancillary power to decide compulsory counterclaim for which there is no independent ground for federal jurisdiction); *Kelly* v. *Pennsylvania R.R.*, 7 F.R.D. 524 (E.D. Pa. 1948) (federal court has ancillary jurisdiction over third party complaint for which there is no independent ground for federal jurisdiction).

In *Oklahoma* v. *Texas*, 258 U.S. 574, 581 (1922), an original action, the Supreme Court reflected this basic principle of ancillary jurisdiction in the following statement:

> It long has been settled that claims of property or funds of which a court has taken possession and control through a receiver or like officer may be dealt with as ancillary to the suit wherein the possession is taken and the control exercised,—and *this although independent suits to enforce the claims could not be entertained in that court.* (Emphasis added.)

III.

THE CONTROVERSY PRESENTED BY THE PLEADINGS IS JUSTICIABLE AS TO THE FOUR ABSENT STATES

The dominant argument of the absent States opposing this motion is that there is no justiciable controversy between them and the present parties. Two reasons are given: That the controversy is solely a Lower Basin dispute, and that because there is no physical shortage of water now, the issues are not now justiciable. Both these reasons are unsound.

A. The Controversy Is Not Solely a Lower Basin Dispute

1. Arizona's prayer to quiet title to 2,800,000 acre-feet of III(a) water from the main stream presupposes a determination that the Lower Basin has title, as against the Upper Basin, to 7,500,000 acre-feet of main stream water under Article III(a) of the Colorado River Compact.

Arizona derives her claim on the main stream to 2,800,000 acre-feet per annum of the 7,500,000 acre-feet of uses apportioned by Article III(a) to the Lower Basin by a process of subtraction:

(1) Arizona first asserts that the 7,500,000 acre-feet is all physically present in the main stream, flowing at Lee Ferry,[1] and identified with the 75,000,000 acre-feet which Article III(d) requires the four States of the Upper Division to let pass Lee Ferry in each ten-year period.[2] This is the

[1] Reply to California's Answer, par. 8, p. 16.

[2] *Id.* at par. 11, p. 18.

hinge of her whole case. She denies that the uses on the Gila are chargeable under Article III(a), and identifies them with the increase of use permitted to the Lower Basin by Article III(b).[1]

(2) Arizona concedes to California 4,400,000 acre-feet per annum, and to Nevada 300,000 acre-feet per annum, of the 7,500,000 acre-feet apportioned to the Lower Basin by Article III(a) and which she says is to be found flowing at Lee Ferry.[2]

(3) On this argument, there is left a residue of 2,800,000 acre-feet of III(a) water, in the main stream, to which Arizona seeks to quiet title.[3]

Putting aside for the moment all other questions—such as whether California and Nevada are in fact limited to the quantities Arizona concedes, or whether uses shall be measured in one way or another—it is clear that Arizona cannot quiet title to a residue of 2,800,000 acre-feet of III(a) water on the main stream unless, in fact, the initial figure of 7,500,000 acre-feet of III(a) water at Lee Ferry is correct.

If it is, then, by hypothesis, the absent States of the Upper Division are at once confronted by the obligation in Article III(*c*), which states that the Mexican burden shall be "supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b)," but if such surplus shall prove insufficient, "the States of the Upper

[1] *Id.* at par. 8, p. 17.

[2] *Id.* at par. 37(b), p. 28.

[3] *Id.* at par. 41, p. 33.

Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d)." Since, on Arizona's hypothesis, the 75,000,000 acre-feet delivered under Article III(d) contains no surplus, but is identified with the Lower Basin's apportionment under Article III(a), the four absent States of the Upper Division must add enough water to meet the deficiency in the Mexican burden. As this burden is fixed by treaty at a minimum of 1,500,000 acre-feet per annum, measured at the Mexican boundary, the effect of Arizona's prayer is to add at least 750,000 acre-feet per year, or 7,500,000 acre-feet in ten years, or ten per cent, to the burden on the States of the Upper Division imposed by Article III(d).

In short, Arizona's suit is necessarily an action to quiet title in the Lower Basin to 7,500,000 acre-feet per annum of III(a) water at Lee Ferry, as against the four absent States of the Upper Division. That step must be accomplished before she can find title to herself in 2,800,000 acre-feet of III(a) water in the main stream, even if she wins every point against California and Nevada.

On the interpretation of California and Nevada, however, the uses on the Gila River System are chargeable to the Lower Basin's apportionment under Article III(a), which provides that the waters apportioned to each Basin "shall include all water necessary for the supply of any rights which may now exist;" which, of course, includes the very old rights on the Gila. That being so, the California defendants say there is no relationship whatever between the obligation of the States of

the Upper Division under Article III(d) to deliver 75,000,000 acre-feet during each ten-year period at Lee Ferry, and the apportionment of uses made by Article III(a) to the Lower Basin. If this is true, then, to the extent that the apportionment of 7,500,000 acre-feet per annum is represented by uses of the waters of the Gila River System or other tributaries in the Lower Basin, the 75,000,000 acre-feet delivered under Article III(d) includes an equivalent quantity of waters of some category other than those apportioned by Article III(a). On any theory of measurement, this equivalent quantity amounts to several million acre-feet in each ten-year period. The California defendants say that this component of the waters passing Lee Ferry is excess or surplus waters unapportioned by the Colorado River Compact, covered in part by the Lower Basin's right to increase its use under Article III(b), and available for use by California under the terms of the Statutory Compact as well as available for satisfaction of the Treaty burden.

In any event, it is quite apparent that the status of the 75,000,000 acre-feet minimum guaranteed at Lee Ferry affects the rights not only of the Lower Basin States under Articles III(a) and III(b) of the Colorado River Compact and the right of the State of California under the Statutory Compact to the use of excess or surplus waters, but also the correlative obligation of the Upper Division States under Article III(c) to bear one-half the deficiency of the Mexican burden. It is impossible to determine that deficiency without first determining whether the 75,000,000 acre-feet includes any excess or surplus waters available in part for discharge of that

burden, as California says, or whether the 75,000,000 acre-feet is all apportioned to the Lower Basin under Article III(a), as Arizona says.

The net effect of the decree which Arizona seeks would be to quiet title in the Lower Basin to 75,000,000 acre-feet at Lee Ferry per ten-year period as water apportioned to the Lower Basin under Article III(a). If this suit is justiciable against California, it is manifestly justiciable against the absent States of the Upper Division—the four obligors under Articles III(c) and III(d). It is against them that Arizona must quiet that title.

Other issues of interpretation of the Colorado River Compact which require a determination affecting the four absent States are catalogued in the "Summary of the Controversy" (Exhibit A to the pending motion), *e.g.*, "whether, if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required" (*Id.* at p. 19) under Article III(e), as the California defendants contend, or whether such waters may be retained in the Upper Basin for power generation. Compare the discussion of this point by Governor Ed Johnson of Colorado, p. 54 *et seq.* of the present brief.

2. *Arizona's contention that the six-state Colorado River Compact, to which she was not a party, has been superseded by a seven-state Compact, to which she is a party, raises a justiciable issue with all parties to the six-state Compact.*

Another critical and clearly justiciable issue in the pending suit is whether Arizona is a party to the Colorado River Compact. The Compact is a

contract which became effective by Presidential proclamation in 1929. Arizona was not a party. This situation continued for at least 15 years. Arizona asserts that in 1944 she ratified what thereby became a seven-state Compact. A new party cannot be imported into a contract without the consent of all of the existing parties. "In making a contract, parties are as important an element as the terms with reference to the subject-matter. . . . A new party could no more be imported into the contract and imposed upon [an existing party] without its consent, than a change could be made in like manner in the other pre-existing stipulations." *First National Bank of Quincy* v. *Hall*, 101 U.S. 43, 50 (1880). Whether Arizona, by her unilateral action in 1944, could become a party to a contract concluded and effective in 1929 cannot be determined in this suit without the presence of all of the original parties.

California contends that her obligation under the Statutory Compact, evidenced by the California Limitation Act, is conditioned upon existence of a six-state Colorado River Compact and the absence of a seven-state Colorado River Compact. She was required by the Boulder Canyon Project Act to assume the burdens of the Limitation Act because, and only because, Arizona refused to ratify the Colorado River Compact and the four absent States refused to acquiesce in a six-state Compact unless it should be accompanied by a limitation upon California's rights. The federal statute, the state statute, and the Presidential proclamation are explicit as to the mutually exclusive character of the six-state and seven-state settlements, as to the fact that the Limitation Act should become operative only in the

absence of a seven-state agreement, and as to the six-months time limit for the crystallization of one result or the other. This issue—whether the tardy ratification of a seven-state agreement by Arizona, fifteen years after expiration of the time stipulated in the Project Act, was unilaterally effective, and whether, if so, the Statutory Compact continues effective—is equally justiciable as to all six States which are beneficiaries of the Statutory Compact. It cannot be litigated without the presence of all six of those States.

3. Arizona's allegations that California has breached the Statutory Compact raise a justiciable controversy with all six co-beneficiaries.

Arizona alleges that California has breached its obligations under the Statutory Compact. (Arizona Complaint, pars. XXVI, XXVII.) California's obligation under that Compact is a single and indivisible promise to the United States for the express benefit of the six other States of the Colorado River Basin, of which Arizona is but one. If California has broken that promise, a justiciable controversy necessarily is raised between her and all six co-beneficiaries.

California by that Compact agrees to limit her consumptive uses so that they

> shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph "a" of article three of the said Colorado river compact, plus not more than one-half of any excess or surplus waters unapportioned by

said compact, such uses always to be subject to the terms of said compact." (Chap. 16, Calif. Stats. 1929, p. 38.)

The breach alleged is that California claims rights in "excess or surplus waters unapportioned by said Compact," has made contracts with the United States for the storage and delivery of such excess or surplus waters, and has built works to use them, whereas (says Arizona) no state can acquire any rights in excess or surplus waters unless and until a new compact, to be made after October 1, 1963, apportions them. The questions of whether excess or surplus waters are open to appropriation, or may be salvaged and stored by the United States and disposed of by Government contract, or are withheld from all states until all (including Arizona) agree on a new compact, are manifestly questions equally affecting all seven States. If California has breached the Statutory Compact in asserting and using the rights to excess or surplus waters given her on the face of the Statutory Compact (and California denies that she has), the breach is against all beneficiaries of that Compact, not Arizona alone.

B. The Assumption as to Water Availability Relied on by the Absent States Is Incorrect. In Any Event, the Facts Are Not Properly the Subject of Judicial Notice and Should Be Determined Only After Hearing

The absent States argue that the present controversy is not justiciable as to them because there is no imminent shortage of water which will affect them. They declare that 7,500,000 acre-feet of

water is apportioned for annual beneficial consumptive use in the Upper Basin of the Colorado River, and that after presently contemplated projects are in operation beneficial consumptive use in the Upper Basin will be an estimated 4,200,000 acre-feet per annum. (Colorado and Wyoming Brief, p. 36.) "The unused portion of the Upper Basin apportionment," say the absent States, "is flowing into the Lower Basin and will continue so to flow until Upper Basin use increases to the amount of its apportioned share." (*Id.* at p. 8.)

The statement that present and immediately contemplated beneficial consumptive uses will total only 4,200,000 acre-feet per annum is not meaningful because "beneficial consumptive use" is in controversy in the present litigation as to its definition, its method of measurement, its relation to reservoir evaporation losses, as well as a number of other aspects. The controversies over "beneficial consumptive use" involve approximately two million acre-feet of water per annum throughout the entire Colorado River Basin. (See initial California Brief, p. 38.)

The argument of the absent States assumes that whatever water is apportioned by the Colorado River Compact is at all times physically available. The assumption is, unfortunately, incorrect. How much water is physically available is a difficult and complex problem to which answers vary, but in any case it is not a subject for judicial notice. A view contrary to the assumption by the absent States in their briefs, was recently expressed by Governor Ed C. Johnson of Colorado:

> Under the Seven State Compact the Upper States must deliver at Lee Ferry in each ten year period 75 million acre-feet to the Lower States and 7½ million acre-feet to Mexico before they can use one drop of water themselves beyond what they used before the Seven State Compact was ratified. In the current ten year period that will leave only 3,250,000 acre-feet per year for their total use. In the previous ten year period they would have had 4,150,000 acre-feet a year. In 1902 the Upper Basin States under this formula would have had no water at all.[1]

C. Present Use of Water in Dispute Is Not Necessary to Constitute a Justiciable Controversy

In *Nebraska* v. *Wyoming*, 325 U.S. 589 (1945), Colorado argued that because water was passing unused down the North Platte River during the irrigating season, there was no justiciable controversy. Colorado's demands related at least in part to future rather than to present uses. The Court said, at page 609:

> The claim of Colorado to additional demands may not be disregarded. The fact that Colorado's proposed projects are not planned for the immediate future is not conclusive in view of the present over-appropriation of natural flow. The additional demands on the river which those projects involve constitute a threat of further depletion.

In the instant case, as in *Nebraska* v. *Wyoming*, natural flow is overappropriated. (Answer of

[1] The full text of Governor Johnson's statement, made on December 20, 1954, is annexed as an appendix to this brief.

Defendants to Arizona Complaint, par. 3; *Problems of Imperial Valley and Vicinity*, SEN. DOC. No. 142, 67th Cong., 2d Sess. (1922), p. 5.)

At page 610 in the same opinion the Court explained the basis for the doctrine that claims to water in excess of supply create a justiciable interstate controversy:

> But where there is not enough water in the river to satisfy the claims asserted against it, the situation is not basically different from that where two or more persons claim the right to the same parcel of land. The present claimants being States we think the clash of interests to be of that character and dignity which makes the controversy a justiciable one under our original jurisdiction.

The principle is clearly applicable to the instant case. That the States opposing the present motion have claims to the use of water which conflict with claims of present parties to this suit, they do not deny. The only matter in doubt is not whether but when the actual shortage will take place. If the figures of Governor Johnson, quoted on page 37, *supra*, are correct, the shortage may take place very soon.

D. The Requirements for a Justiciable Controversy Do Not Change When States Are Parties

The absent States argue that usual requirements for a justiciable controversy are inapplicable to litigation between states. The cases cited in their briefs, however, contribute nothing toward proving such an exception. The reason for doubt-

ing the existence of an exception applicable to states is compelling.

If the issues between the absent States and the present parties are nonjusticiable, the reason can only be that they do not present a case or controversy within the meaning of Article III, Section 2 of the United States Constitution. What the argument necessarily means, if valid, is that the words "case" and "controversy" in the Constitution have one meaning as to private persons, another meaning as to states. The distinction would import endless and unnecessary confusion, and is without any support in the decisions.

So far as they are pertinent in this connection at all, the cases cited by the States opposing the motion stand for the propositions that between states more material injury must be shown to justify relief than in cases between other types of litigants and that a case against a state must rest on clearer proof. Both of these are considerations relevant to the decree or final disposition of litigation. They have nothing to do with jurisdiction or joinder of parties.

Colorado v. *Kansas*, 320 U.S. 383 (1943), is a clear example. This case is cited or quoted in the Colorado and Wyoming Brief at pages 17 and 31, in the Utah Brief at pages 7-8, 9, 11, 13, 16, 19, and 21. The fact that the quoted language from this case has nothing to do with the jurisdictional issue of justiciable controversy is clearly shown by the history of the litigation. Jurisdiction to determine this dispute over the right to use waters of the Arkansas River was determined in *Kansas* v. *Colorado*, 185 U.S. 125 (1902), when the Court

overruled Colorado's demurrer to Kansas' complaint. After hearing, this Court determined that the plaintiff had not established a basis for relief. 206 U.S. 46 (1907). This was an adjudication on the merits and constituted an exercise of jurisdiction. So likewise did the decision in 1943, when the roles as plaintiff and defendant were reversed and a Kansas water users' association was an added party defendant. The Utah Brief recognizes this situation when it describes the two States, after 1907, as "operating under a 'decree of the court' subject to a reopening at a future time when present injury existed." (Page 8.) The exercise of jurisdiction presupposes that the controversy was justiciable. Peculiarities based on the nature of states as parties go to the decision on the merits, and not to justiciability and jurisdiction.

What is true of *Colorado* v. *Kansas* is also true of a number of other cases cited by the absent States; they have nothing to do with jurisdiction or joinder of parties.[1]

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[1] *Missouri* v. *Illinois*, 200 U.S. 496 (1906), Colorado and Wyoming Brief page 18, Utah Brief pages 11, 20, New Mexico Brief page 6. The jurisdictional matters had been disposed of in *Missouri* v. *Illinois*, 180 U.S. 208 (1901), when demurrer to the complaint had been overruled. Dismissal of the bill without prejudice in 1906 was clearly an adjudication on the merits after a careful review of complex evidence and a weighing of equities. What is said about judicial restraint in matters between states has nothing to do with the test of a justiciable controversy.

Connecticut v. *Massachusetts*, 282 U.S. 660 (1931), Colorado and Wyoming Brief pages 18, 32, Utah Brief pages 11, 21, New Mexico Brief page 6. The decision was a denial of an

In *Arizona* v. *California*, 283 U.S. 423 (1931), the first decision by this Court in the Colorado River litigation, the Court did refuse to take jurisdiction. Arizona's bill against California,

injunction sought by Connecticut to prevent Massachusetts from diverting water from the watershed of the Connecticut River for storage and use in the Boston metropolitan area. The decision after careful review of the evidence was an exercise of jurisdiction, and necessarily a determination that there was a justiciable controversy.

New York v. *New Jersey*, 256 U.S. 296 (1921), Colorado and Wyoming Brief page 18, Utah Brief page 11, New Mexico Brief page 6. This was a suit to prevent New Jersey from discharging sewage into the New York harbor. Again, the dismissal after a careful review of the evidence constituted an exercise of jurisdiction and a necessary determination that there was a justiciable controversy. The decree was without prejudice to renewal of an application for an injunction.

North Dakota v. *Minnesota*, 263 U.S. 365 (1923), Colorado and Wyoming Brief page 18, Utah Brief page 11, New Mexico Brief page 6. North Dakota sought to enjoin activities in Minnesota which allegedly caused flooding and destruction in the plaintiff state, and also to recover money damages on behalf of North Dakota citizens. The bill was dismissed without prejudice because proof of the causal connection between the works in Minnesota and floods in North Dakota was lacking. Money damages for North Dakota citizens were held forbidden by the Eleventh Amendment. Again, the case shows an exercise of jurisdiction and the presence of a justiciable controversy.

Washington v. *Oregon*, 297 U.S. 517 (1936), Colorado and Wyoming Brief page 18, Utah Brief page 11, New Mexico Brief page 6. Washington's bill for an equitable apportionment and injunctive relief against Oregon, relating to the waters of the Walla Walla River, was dismissed on the merits after a careful review of the evidence. Again, there was an exercise of jurisdiction connoting the presence of a justiciable controversy.

Colorado, Nevada, New Mexico, Utah, Wyoming, and the Secretary of the Interior seeking to restrain the building of Hoover Dam was dismissed. The Court pointed out that Arizona's complaint showed 9,000,000 acre-feet of unappropriated water available and no prospect of interference with Arizona's right to appropriate it. Since 1931 there have been a number of significant changes in circumstances: a protracted dry period since that date; increased uses throughout the Basin; execution of a Treaty guaranteeing Mexico 1,500,000 acre-feet per annum; purported ratification of the Colorado River Compact by Arizona and the negotiation of purported water delivery agreements by the Secretary of the Interior with Arizona. In the 1931 case all the parties but Arizona agreed there was no justiciable controversy; today everyone agrees that a justiciable controversy among present parties to the suit exists.

In other cases cited in one or more of the briefs of the absent States, in which no justiciable controversy was found, the reasons for finding

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[1] Motion of Ray Lyman Wilbur, Secretary of the Interior, to Dismiss the Bill of Complaint, p. 2; Motion to Dismiss filed by California, Colorado, Nevada, New Mexico, Utah, and Wyoming, p. 1.

[2] Arizona Motion for Leave to File Bill of Complaint and Bill of Complaint, p. 5; California Answer to Bill of Complaint, par. 74; Nevada Answer to United States Petition of Intervention, par. XVIII; United States Brief in Support of Motion for Leave to Intervene, p. 29 *et seq.*

absence of a justiciable controversy are clearly inapplicable to the present case.[1]

Only one other group of cases cited by the absent States requires notice. New Mexico cites two decisions on pages 6 and 7 of its brief for the proposition that "The exercise of original jurisdiction in an interstate case is not man-

[1] In *Alabama* v. *Arizona*, 291 U.S. 286, (1934), the plaintiff State was denied leave to file its bill of complaint to restrain the operation of the prison-made goods statutes of five States. A number of grounds are given in the opinion, among them the fact that the bill on its face did not show an injury justifying relief.

In *Massachusetts* v. *Missouri*, 308 U.S. 1, (1939), Massachusetts was denied leave to file a complaint against Missouri to prevent application of Missouri taxes with respect to property left by a Massachusetts domiciliary and held by Missouri trustees. No justiciable controversy, in such a case is presented when a state is the party litigant, at least where the property is adequate to meet all taxes assessed by the states in question.

In *New York* v. *Illinois*, 274 U.S. 488 (1927), the Court granted a motion to strike one paragraph from the complaint of New York in an action against Illinois to prevent lowering the level of the Great Lakes. The paragraph concerned New York's right to use the waters of the Niagara and St. Lawrence Rivers for power, but alleged no plans to do so.

In *United States* v. *West Virginia*, 295 U.S. 463 (1935), the Court dismissed an action to restrain the building of a dam in the New and Kanawha Rivers, and to declare the rivers navigable. No controversy was stated with West Virginia which purported to be merely the licensor of the corporate defendants who were building the dam. Dismissal of the State deprived the Court of original jurisdiction over the corporate defendants.

United States v. *Appalachian Electric Power Co.*, 311 U.S. 377 (1940), is cited merely for its dictum, at page 423, that the Court will not decide abstract propositions.

datory." *Georgia* v. *Pennsylvania R.R.*, 324 U.S. 439 (1945); *North Dakota* v. *Chicago & Northwestern R.R.*, 257 U.S. 485 (1922). Neither of the two cases was an interstate case, although a state was plaintiff in both. Neither case stands for this proposition, even by way of dictum. The proposition for which the two cases actually stand is stated in *Georgia* v. *Pennsylvania Railroad*, *supra*, at 464-65:

> The Court in its discretion has withheld the exercise of its jurisdiction where there has been no want of another suitable forum to which the cause may be remitted in the interests of convenience, efficiency and justice.

This principle has no application to suits between two or more states. In such cases the United States Supreme Court is the only forum available.

In sum, what the cases cited by the opposing briefs show is that different criteria control the granting of relief against states, but not the exercise of jurisdiction. The California defendants believe that not only should the Court take jurisdiction but should grant a decree settling the controversy.

IV.

CLAIMS OF THE UNITED STATES MATERIALLY AFFECT THE FOUR ABSENT STATES AND ARE NOT DISPOSED OF BY THE UPPER COLORADO RIVER BASIN COMPACT

The United States in its petition of intervention has asserted a number of different claims to the use of water of the Colorado River System. These claims include rights:

(1) To store water for the servicing of water delivery contracts which aggregate nearly 8,500,000 acre-feet per annum of the water stored in Lake Mead;

(2) To comply with international obligations arising from the Mexican Treaty of 1944;

(3) To fulfill the Government's obligations to Indians and Indian tribes;

(4) To protect the interest of the United States in fish and wildlife, flood control and navigation;

(5) To meet the needs of the National Park Service, the Bureau of Land Management, and the Forest Service;

(6) To service contracts for generation and delivery of electric power.

The issues these claims present are as justiciable against States of the Upper Basin as against States of the Lower Basin. As the initial California brief on the pending motion developed in some detail, these claims involve the States opposing the pending motion in several ways:

(1) Their disposition will affect obligations of those States to make water available to the Lower Basin;

(2) Each category of claims involves questions of law in common to all of the States of the Colorado River Basin;

(3) A determination that Indian rights are outside and superior to rights under the Colorado River Compact would render the Compact unworkable.

Utah replies that the "complete answer" is Article VII of the *Upper* Colorado River Basin Compact of 1948. (Utah Brief, pp. 18-19.) The same position is taken by Colorado and Wyoming. (Colorado and Wyoming Brief, p. 33.) Article VII provides that water uses by the United States are charged to the State in which such uses occur.

Although California agrees that the principle in Article VII of the Upper Colorado River Basin Compact is sound, that principle is not accepted by the United States in this suit. (See par. XXVII and par. XXXVII of the United States Petition of Intervention, relating to Indian rights.) The *Upper* Colorado River Basin Compact, although consented to by Congress, does not bind the United States. Congress can subject the United States to an interstate compact, and did so in the Boulder Canyon Project Act, which approved the Colorado River Compact. (See Boulder Canyon Project Act, Secs. 8, 13, 18, Appendix No. 2 to the California Answer, Appendix Vol. I, p. 9.) It did not do so in approving the *Upper* Colorado

River Basin Compact. 63 STAT. 31 (1949). The Report of the House Committee on Public Lands on the Resolution which granted consent to the Upper Basin Compact explicitly recognized that "the Upper Colorado River Basin Compact is binding only upon the States which are signatory thereto . . . ." (See Extract from Report, Appendix No. 32 to California Answer, Appendix Vol. II, p. 89.)

Even without the declaration in the legislative history Article VII of the Upper Basin Compact would not bind the United States. An interstate compact is not a statute of the United States. *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938). The function of an interstate compact is to establish rights between States, not between States and the United States.

Furthermore, the Upper Basin Compact does not even purport to apply to the Lower Basin rights and obligations of New Mexico and Utah with respect to the United States.

V.

LOWER BASIN RIGHTS OF NEW MEXICO AND UTAH ARE NOT DE MINIMIS

Utah in her brief, at pages 15-16, says:

> The interests of the State of Utah in the waters of the Lower Basin are certainly *de minimus* [*sic*]. Their maximum rights and claims to the waters of the Lower Basin do not equal in magnitude even 2½ percent of the water allocated by the Compact to the

> Lower Basin exclusive of surplus or unappropriated water. Clearly applicable here is the statement of this court in *Colorado* v. *Kansas*, 320 U.S. 383, 88 L. Ed. 116 at page 124: "Before the court will intervene the case must be of serious magnitude and fully and clearly proved."

Of the authority cited, it is necessary to say again what was said under point III of this brief. Magnitude of the injury and clarity of proof are matters that become pertinent after the Court has assumed jurisdiction. In any case, Utah's *de minimis* is hard to reconcile with the facts.

It is not clear whether Utah refers to 2½ per cent of 7,500,000 acre-feet of water or to 2½ per cent of 8,500,000 acre-feet. In the first case, the quantity is 187,500 acre-feet. In the second instance it is 212,500 acre-feet. One acre-foot of water is 43,560 cubic feet, or 325,850 gallons. 187,500 acre-feet is about 61 billion gallons. One acre-foot will supply the domestic needs of five or six persons for one year. The quantity that Utah says is "certainly *de minimis*" would supply the yearly needs of a city of 1,000,000 persons, or five cities with the population of Salt Lake City. The beneficial consumptive use of water for irrigation prevailing in southern Utah averages around two acre-feet per acre per year. (United States Bureau of Reclamation, Region 3, *Water Supply of the Lower Colorado River Basin* [1952], p. 105). Thus, the quantity of water claimed by Utah is enough to irrigate approximately 100,000 acres.

In *Wyoming* v. *Colorado*, 259 U.S. 419 (1922), the Court's decree (259 U.S. at 496) had been entered only a few months when it had to be modified to recognize the right of Colorado to a "relatively small amount of water" appropriated before 1902 from Deadman Creek. 260 U.S. 1 (1922). This relatively small amount continued to be a problem and fourteen years later was determined to be 2,000 acre-feet per year. 298 U.S. 573 (1936). The entire water supply in controversy in *Wyoming* v. *Colorado* was determined to be 288,000 acre-feet per annum. 259 U.S. at 496. In *Nebraska* v. *Wyoming*, 296 U.S. 553 (1935), Colorado was joined as a party on the basis of Wyoming's allegation that Colorado's claims were "upwards of 250,000 acre feet per annum." (See footnote 1, p. 13 *supra.*)

Recent legislation authorized the so-called "second barrel" of an aqueduct to furnish an additional eighty cubic feet per second of capacity for San Diego, California. 65 STAT. 404 (1951). This capacity amounts to a maximum, at full utilization, of some 58,000 acre-feet per annum. This brief statute is laced, in five separate places, with disclaimers that the facility in any way increases the rights of San Diego to the use of Colorado River water, all at the insistence of counsel for the Upper Basin States. *Hearing No. 44 before Committee on Armed Services on H.R. 5102*, 82d Cong., 1st Sess. (1951), p. 1889. This 58,000 acre-feet for San Diego is less than one-third of what Utah now calls *de minimis*.

Utah also says that she is now negotiating with Arizona for a distribution by compact of her share of Lower Basin water. (Utah Brief, p. 20.) She also says that her presence in this suit would

be "absolutely to preclude the possibility of an amicable settlement of Utah's rights by compact and by negotiations." *Id.* at p. 16. New Mexico says, without further explanation, that "[I]t is not in the best interest of New Mexico at this time and in the present suit to be compelled to litigate and have determined the exact magnitude of this equitable share in terms of acre feet of [Lower Basin] water." (New Mexico Brief, p. 5.)

Why Utah is negotiating a compact to settle interests she regards as *de minimis* is not explained. Nor does she explain how, in a compact with Arizona, she can establish her share in water to which five States and the United States assert claims. Utah does not explain why her joinder would foreclose any possibilities for negotiation that now exist. No reason is apparent why pendency of litigation should interfere with any negotiations.

CONCLUSION

The Upper Basin States in their briefs impugn the motives of the California defendants in filing the pending motion.[1] California's sole purpose in

[1] The Upper Basin States quote statements by California representatives before Congressional Committees that the problems of the Lower Basin could be litigated without affecting the legal rights of the Upper Basin States. For Upper Basin response at that time see *Hearings before a Subcommittee of the Senate Committee on Interior and Insular Affairs on S. J. Res. 145*, 80th Cong., 2d Sess. (1948) p. 198: "We feel that any matter which involves the interpretation or application of the Colorado River compact necessarily involves every State which is signatory to that compact. In fact, we feel that in any litigation each of the signatory States would be an indispensable party to the litigation." To the same effect see pp. 183, 184-85, 187, 189, 302.

seeking to join the absent States is to assure a decree that will settle with finality the vital issues affecting the waters of the Colorado River System. California too dislikes litigation, but prefers a single case to a series of cases. Especially does she wish to avoid future litigation in which a decree in this case would be *res judicata* as to three States and the United States, but not as to the four absent States.

The absent States must be made parties because Arizona, California, Nevada, and the United States have joined in asking this Court to resolve a controversy which deeply affects the welfare and future of the entire Colorado River Basin. The compacts and laws which this Court must construe and apply if it is to resolve that controversy constitute the Law of the River. All of the States of the Colorado River Basin have participated in making that law, all are deeply affected by it. To avoid uncertainty, confusion, and endless controversy there must be but one Law of the River. To that end, it is necessary that Colorado, New Mexico, Utah, and Wyoming be made parties to this suit.

Colorado, New Mexico, Utah and Wyoming urge they should not be joined in this suit because there is water in the Upper Basin not yet being used. If the Upper States are not joined for the reason that the water in the Upper Basin is not yet being used a judicial decision will be impossible until water in dispute is actually unavailable to communities that have become dependent upon it. Decisions could be made only when costly projects would be rendered useless for lack of water.

To so hold, for whatever reason, would be to decide that waste, privation, and human suffering are requisites to judicial decision. The California defendants do not believe that this is or ever will be the law. The issues which must be decided are as sharply delineated today as they will be in either the near or the distant future. The controversy is actual and real; the need for decision is pressing.

For the reasons stated in this brief and the initial brief, the defendants respectfully urge that the motion be granted.

Respectfully submitted,

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APPENDIX

STORAGE BELOW THE STATE OF COLORADO IS NOT THE ANSWER[1]

By Ed C. Johnson
United States Senator, Colorado

Interested persons on the Eastern and Western Slopes of Colorado have expressed confidence in me, as Governor, to resolve the very controversial water problem that plagues both slopes. This is a tremendous responsibility and challenge but its vital nature demands my acceptance. Accordingly, I shall do my utmost to work out something which will benefit both slopes and injure neither.

However, before we begin the task of allocating Colorado's share of the water of the Colorado River System, we first must take stock of the quantity and the location of the water that is available to us. There are very serious misconceptions, widely held, in regard to the burdens placed on this state by the specific provisions of the Seven State Compact and the official interpretations with respect to them. These limitations should be understood clearly by all parties concerned, since they are basic to any plan to develop the Upper Colorado River Basin. It is with that purpose in mind that I have prepared this document. If my conclusions are in error I want to be show wherein the error lies.

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[1] This statement was issued on December 20, 1954, while Governor Johnson was United States Senator and Governor-elect of Colorado. It is reproduced as an extension of remarks of Representative John P. Saylor, of Pennsylvania. 101 Cong. Rec. A168-A171 (January 13, 1955).

Either the Seven State Compact specifically denies to the Upper Basin the right to withhold water which it cannot use for agricultural and domestic purposes or it does not deny us such a right. Either it denies to the Upper Basin the right to withhold water to develop power or it does not deny us that right. Let us look at the document which has been ratified by the Legislatures of seven states for the correct answers to these pertinent questions.

Here is that irrevocable record:

Article II

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

Article III

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

The Honorable Herbert Hoover, Secretary of Commerce of the United States, was appointed by the President to serve as Chairman of the Seven State Compact Commission as the Official Representative of the Government of the United States, pursuant to an Act of Congress. He was the Chairman of the Colorado River Commission that drafted and signed the Seven State Colorado River Compact. In answer to the question propounded by Congressman Hayden these points in

the compact were interpreted officially by him on January 27, 1923, before any state had ratified the Compact, as follows:

Question 14. Can paragraph (d) of Article III be construed to mean that the States of the upper division may withhold all except 75,000,000 acre-feet of water within any period of 10 years and thus not only secure the amount to which they are entitled under the apportionment made in paragraph (a) but also the entire unapportioned surplus waters of the Colorado River?

Answer. No. Paragraph (a) of Article III apportions to the upper basin 7,500,000 acre-feet per annum. Paragraph (e) of Article III provides that the States of the upper division shall not withhold water that cannot be beneficially used. Paragraph (f) and (g) of this article specifically leave to further apportionment water now unapportioned. There is, therefore, no possibility of construing paragraph (d) of this article as suggested.

Question 19. Why is the impounding of water for power purposes made subservient to its use and consumption for agricultural and domestic purposes, as provided in paragraph (b) of Article IV?

Answer.

(a) Because such subordination conforms to established law, either by constitution or statute, in most of the semiarid States. This provision frees the farmer from the danger of damage suits by power companies in the event of conflict between them.

(b) Because the cultivation of land naturally outranks in importance the generation of power, since it is the most important of human activities, the foundation upon which all other industries finally rest.

(c) Because there was a general agreement by all parties appearing before the commission, including those representing power interests, that such preference was proper.

Question 20. Will this subordination of the development of hydroelectric power to domestic and agricultural uses, combined with the apportionment of 7,500,000 acre-feet of water to the upper basin, utterly destroy an asset of the State of Arizona consisting of 3,000,000 horsepower, which it is said could otherwise be developed within that State if the Colorado River continues to flow, undiminished in volume, across its northern boundary line and through the Grand Canyon?

Answer.

(d) The compact provides that no water is to be withheld above, that cannot be used for purposes of agriculture. The lower basin will therefore receive the entire flow of the river, less only the amount consumptively used in the upper States for agricultural purposes.

On December 15, 1922, Honorable Delph E. Carpenter, Commissioner for Colorado, reported to Governor Oliver H. Shoup his analysis of this compact which he helped to formulate. His comments and observations are especially pertinent. In this official report he said:

"Power claims will always be limited by the quantity of water necessary for domestic and agricultural purposes. The generation of power is made subservient to the preferred and dominant uses and shall not interfere with junior preferred uses in either basin."

On March 20, 1923, Delph E. Carpenter in a joint letter to Colorado Senator M. E. Bashor and Colorado Representative Royal W. Calkins said among other things:

> All power uses in both basins are made subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

The interpretation of Honorable W. S. Norviel, Commissioner for Arizona, published January 15, 1923, contains this language:

> "The third principle established by the compact was to fix a time when the remainder of the water unallotted and unused might be apportioned.
>
> The fourth principle fixes a preference in agricultural uses over power.
>
> The fifth principle, that the upper states shall not withhold water that cannot be reasonably applied for agricultural uses."

Senator Hayden, Arizona, propounded 19 questions to Honorable A. P. Davis, Director United States Reclamation Service, to which the Director made the following replies on January 30, 1923:

> *Question 10.* Is it true that, if the Colorado River compact is adopted, all of the water that Arizona will ever get out of the main river will be enough to irrigate only 280,000 acres of land, of which 130,000 acres are now embraced in the Yuma project and 110,000 acres in the Parker project?
>
> *Answer.* The Colorado River compact does not attempt to divide the water of the river

between individual States. Except for rights already initiated by California and Nevada, there is nothing in the compact that will prevent the State of Arizona from taking from the river all the water that it can put to beneficial use.

Question 19. Any further comment that you may care to make relative to the approval of the Colorado River compact by the Arizona State Legislature will be appreciated.

Answer. The Colorado River compact provides that the lower basin shall be guaranteed an average of 7,500,000 acre-feet of water annually from the upper basin and all of the yield of the lower basin, and that any water not beneficially used for agricultural and domestic uses shall likewise be allowed to run down for use below.

It should be noted that these official interpretations were made before the compact was ratified by any State except Nevada and were not disputed by Colorado or any other State at the time it ratified the compact. Most certainly we are bound hand and foot by them.

At the time the Seven State Compact was adopted and ratified, it was contemplated that a treaty would be negotiated later between the United States and Mexico which would allocate to Mexico certain quantities of water defined in acre-feet, out of the Colorado River System. Furthermore, it spelled out just how that burden should fall upon the Lower Basin and the Upper Basin. The compact specified that to the extent there is surplus water in the Colorado River System, such surplus water would be utilized and

the balance of the burden would be shared equally by the Upper and Lower Basins.

Article III

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

If the Upper Basin States build Storage Reservoirs at the Glen Canyon and Echo Park sites as is now contemplated, the water withheld thereby will of necessity, be surplus water since the Upper States cannot use it for agricultural or domestic purposes, and the Upper States, therefore, must deliver such water to Mexico as is

allocated to her under the provision of the Seven State Compact.

Senator Hayden asked Chairman of the Commission, Herbert Hoover, about this and was answered as follows:

> *Question 15.* Does paragraph (d) of Article III in any way modify the obligation of the States of the upper division, as expressed in paragraph (c), to permit the surplus and unapportioned water to flow down in satisfaction of any right to water which may hereafter be accorded by treaty to Mexico? Within any year of a 10-year period, could the States of the upper division shift to the States of the lower division the entire burden of supplying such water to Mexico.
>
> *Answer.*
>
> (a) No. It is provided in the compact that the upper States shall add their share of any Mexican burden to the delivery to be made at Lee Ferry, whenever any Mexican rights shall be established by treaty. By paragraph (c) of Article III, such an amount of water is to be delivered in addition to the 75,000,000 acre-feet otherwise provided for.
>
> (b) In the face of the specific provision of Article III (c) that the burden of any deficiency must be "equally borne," I can see no possibility of placing upon the lower division the entire burden. If the surplus is sufficient, there is no burden on anyone. If it is insufficient the plain language is that it must be equally shared, with the equally plain provision that the upper division must furnish its half.

Delph Carpenter in his official report to Governor Shoup said:

> "Any waters necessary to supply lands in the Republic of Mexico (hereafter to be determined by international treaty) shall be supplied from the surplus flow of the river. If the surplus is not sufficient, any deficiency shall be borne equally by the upper basin and the lower basin. * * *"

I am certain that Mr. Carpenter would have added, had he thought such a doubt were to be raised, "Water held in the Upper Basin to generate power and which for physical reasons could not be used by the Upper Basin for agricultural or domestic purposes is surplus water to the Upper Basin." Such an interpretation must be crystal clear to any student of the Seven State Compact and the official interpretations of its provisions.

The Upper and Lower Basins were each apportioned from the Colorado River System the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, and in addition the Lower Basin was given the permission to increase its beneficial consumptive use of an extra million acre-feet per annum of surplus water. However, the 7,500,000 acre-feet awarded to the Lower States had a very clear priority over the 7,500,000 acre-feet awarded to the Upper States. In reality, the compact gave the Lower States 7,500,000 acre-feet of water per annum and the Upper States that much water if there should be any water left in the River, provided the Upper States used that water only for domestic or agricultural purposes.

Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

But here is the catch in this award:

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

The following quotes from the questions by Senator Hayden and answered on January 27, 1923, by Chairman of the Commission Herbert Hoover leave nothing to the imagination with respect to the extra one million acre-feet of surplus water awarded the Lower Basin. The extra million acre-feet is to be met out of surplus waters over and above the 7,500,000 acre-feet allocated annually to each of the two basins and it does not take priority over the Upper States award of 7,500,000 feet provided they use all of their

7,500,000 for agricultural and domestic purposes. If the Upper Basin stores water for power purposes at least a million acre-feet per annum must go to satisfy this demand.

Question 6. Are the 1,000,000 additional acre-feet of water apportioned to the lower basin in paragraph (b) of Article III supposed to be obtained from the Colorado River or solely from the tributaries of that stream within the State of Arizona?

Answer. The use of the words "such waters" in this paragraph clearly refers to waters from the Colorado River system, and the extra 1,000,000 acre-feet provided for can therefore be taken from the main river or from any of its tributaries.

Question 22. Does the Colorado River Compact apportion any water to the State of Arizona?

Answer. No, nor to any other State individually. The apportionment is to the groups.

It should be noted, and I repeat, that Secretary Hoover's official interpretations were made before the compact was ratified by any state; furthermore it was not disputed by any of them when they did ratify it.

On December 15, 1922, Colorado Commissioner Delph E. Carpenter in his official report to the Governor of Colorado, the Honorable Oliver H. Shoup, submitted several tables explaining the allocation of the water of the Colorado River System.

Table 4 reads as follows:

Table 4

	Acre-feet
"Upper Division Allocation, includes present consumption	7,500,000
Lower Division Allocation, includes present consumption	7,500,000
Lower Division permissible increase in water consumption	1,000,000
Total allocated or permitted	16,000,000
Unallocated surplus (estimated)	4,500,000
Estimated average annual water supply	20,500,000"

Mr. Carpenter also said in this report:

> "At any time after 40 years, if the development in the Upper Basin has reached 7,500,000 acre-feet annual beneficial consumptive use or that of the Lower Basin has reached 8,500,000 acre-feet, any two States may call for a further apportionment of any surplus waters of the river, * * *."

On March 20, 1923, Colorado Commissioner Delph E. Carpenter in a joint letter to Colorado Senator M. E. Bashor and Colorado Representative Royal W. Calkins said, among other things:

> Paragraph (b), Article III permits the lower basin to increase its annual beneficial consumptive use of water 1,000,000 acre-feet. The two paragraphs permit an aggregate annual beneficial consumptive use of 8,500,000 acre-feet, and no more. The words "per annum", as used in paragraph (b) are not synonymous with the word "annually." No cumulative increase is intended by that paragraph.

On February 10, 1923, Colorado Commissioner Delph E. Carpenter addressed a telegram to the Honorable Herbert Hoover, Chairman, Colorado River Commission and received a prompt reply. On February 13, 1923, he addressed a telegram to the Honorable R. T. McKisick, Deputy Attorney General, Sacramento, California, and that same day received a reply.

These exchanges of telegrams are pertinent to an understanding of this phase of the compact and are inserted here.

Telegram

CAPITOL BUILDING
Denver, Colo., February 10, 1923

HON. HERBERT HOOVER,
Chairman, Colorado River Commission,
Washington, D. C.:

Do you concur with me that the intent of the commission in framing the Colorado River Compact was as follows:

That paragraph (b) of Article III means that the lower basin may increase its annual beneficial consumptive use of water 1,000,000 acre-feet and no more?

DELPH E. CARPENTER

Washington, D. C., February 12, 1923.

DELPH E. CARPENTER,
State Capitol, Denver, Colo.:

I concur with you, and shall so advise Congress in my report, that the intent of the Commission in framing the Colorado River Compact was as follows:

Paragraph (b) of Article III means that lower basin may acquire rights under the compact to annual beneficial consumptive use of water in excess of the apportionment in paragraph (a) of that article by 1,000,000 acre-feet and no more. There is nothing in the compact to prevent the States of either Basin using more water than the amount apportioned under paragraphs (a) and (b) of Article III, but such use would be subject to the further apportionment provided for in paragraph (f) of Article III and would vest no rights under the present compact.

HERBERT HOOVER

Denver, Colo., February 13, 1923.

R. T. MCKISICK,
Deputy Attorney General,
Sacramento, Calif.:

Do you concur with me that intent of Commission in framing Colorado River Compact was as follows:

That paragraph (b) of Article III means that the lower basin may increase its annual beneficial consumptive use of water 1,000,000 acre-feet and no more?

DELPH E. CARPENTER

Sacramento, Calif., February 13, 1923

HON. DELPH E. CARPENTER,
State Capitol, Denver, Colo.:

Am of opinion that paragraph (b) of Article III permits increase of annual beneficial consumption use of water by lower basin to 8,500,000 acre-feet total or 1,000,000 in excess quantity apportioned each basin in perpetuity

by paragraph (a), Article III, and no more. When both paragraphs are read together no other construction tenable. "Per annum" not synonymous with "annually."

R. T. McKisick

Sacramento, Calif., February 15, 1923

Delph E. Carpenter
Denver, Colo.:

My interpretation of Article III and VIII well expressed in McKisick's wire of the thirteenth.

W. F. McClure
Seven State Compact Commissioner
for California

Utah Commissioner, R. E. Caldwell, in his report to the Utah Senate, among other things said:

> The Lower Basin States, for the most part, when they divert their water, wholly consume it and they get no credit for use of return flow for it does not exist; and they are, therefore, limited to the diversion of 8,500,000 acre-feet and are held strictly to the requirement of "consumptive beneficial use" of such as they do divert.

In the report to the Governor of California by Honorable W. F. McClure, Commissioner for California, made January 8, 1923, appears this statement:

> In conclusion permit me to add that the terms of the compact do full justice to the

states in interest, and the equitable division and apportionment of the use of the waters of the Colorado River System whereby the Lower Basin is allocated 7,500,000 acre-feet per annum, with an allowable increase of 1,000,000 acre-feet per annum by reason of the probably rapid development upon the lower river, and fully guarantees to California an ample water supply to adequately care for the enormous future growth of the Imperial Valley and adjacent territory.

The Honorable Herbert Hoover, who, as I have said, was the chairman of the commission that drafted and approved by its unanimous vote the Seven State Compact, said:

> "The Lower Basin will, therefore, receive the entire flow of the river, less only the amount consumptively used in the Upper States for agricultural purposes."

The Honorable A. P. Davis, Director of the Reclamation Bureau, on January 30, 1923, announced that:

> "The Colorado River Compact provides that the Lower Basin shall be guaranteed an average of 7,500,000 acre-feet of water annually from the Upper Basin and all of the yield of the Lower Basin, and that any water not beneficially used for agricultural and domestic uses (in the Upper Basin) shall likewise be allowed to run down for use below."

This data proves conclusively that the extra 1,000,000 acre-feet of water per annum allocated to the Lower Basin is to be acquired from the

surplus and otherwise unallocated water of the Colorado River System. The same is true of the 1,500,000 allocated annually by treaty to the United States of Mexico.

I am compelled to keep emphasizing that whatever water is stored in the Glen Canyon and Echo Park reservoirs will be surplus to the agricultural and domestic needs of the Upper Basin, and must be delivered to the Lower Basin to satisfy the award of 1,500,000 acre-feet to Mexico and 7,000,000 acre-feet to the Lower Basin. Furthermore, should the Lower Basin require an additional supply of water for agricultural and domestic purposes the water stored in these reservoirs must be released.

Under the Seven State Compact the Upper States must deliver at Lee Ferry in each ten year period 75 million acre-feet to the Lower States and 7½ million acre-feet to Mexico before they can use one drop of water themselves beyond what they used before the Seven State Compact was ratified. In the current ten year period that will leave only 3,250,000 acre-feet per year for their total use. In the previous ten year period they would have had 4,150,000 acre-feet a year. In 1902 the Upper Basin States under this formula would have had no water at all.

The Reclamation Bureau estimates that the proposed Storage Reservoirs in the Upper Colorado Basin will cost the Upper Basin 880,000 acre-feet annually in evaporation. It will be charged to the Upper Basin as consumptive use. Colorado's portion of that loss would be 400,000 acre-feet.

Water still does not run up hill, and storage down the river from Colorado to generate electric energy, frowned upon by the Seven State Compact, cannot secure for us one drop of water, but to the contrary, will cost us 400,000 acre-feet annually in evaporation, which under the Upper Colorado Basin Compact will be charged to Colorado as consumptive use.

Colorado is close to the bottom of the barrel insofar as Colorado River water is concerned. Colorado has a record of lavish generosity to all of her neighbor States. Now at this late date it will be state suicide unless she looks after her own interests with courage and wisdom. She positively cannot afford the loss of 400,000 additional acre-feet. She cannot afford to agree to a storage plan whose certain effect will be to create additional surplus water out of the Upper Basin's meager supply, which under the Seven State Compact must go to the Lower Basin. Colorado must insist that the 42 reservoirs surveyed in the high country of Colorado be authorized simultaneously with the authorization of the Storage Plan and which will give Colorado an absolute right to the water which is developed.

The Hill report prepared pursuant to a contract with the Colorado Legislature indicates there is something over a million acre-feet of unappropriated water in the Colorado River System in Colorado. However, the Hill report did not charge Colorado with the burden of Colorado's portion of the priority commitment to Mexico, which under the Seven State Compact cannot be less than 375,000 acre-feet. And, another thing,

if Glen Canyon and the Echo Park reservoirs are built, Colorado's portion of the Mexican burden becomes not less than 750,000 acre-feet annually. Had Mr. Hill recognized these binding and irrevocable priorities and the evaporation of the down-river storage plans, which is to be charged to Colorado as "consumptive use" of 400,000 acre-feet; he could not have shown any unappropriated water whatsoever in Colorado for Colorado.

Colorado has entered into irrevocable compacts with all of the States to the East, West, North, and South. In each of these compacts Colorado has been generous to a fault. Now most of her water is lost forever, and yet her neighbors are asking her to surrender more and more of this most precious resource. The time has come when Colorado's dwindling supply must be guarded jealously and protected fully. That is a responsibility which I, as Governor of Colorado, must assume.

Who will say that the Glen Canyon Dam in the State of Arizona and the Echo Park Dam on the Colorado-Utah border are not extraordinary dams from an engineering point of view. Glen Canyon is the sort of project that makes an engineer's mouth water, and the Reclamation Bureau is a Bureau of engineers. Who will say that these projects will not be of incalculable value to the Lower Basin. Glen Canyon, which will collect 100,000 acre-feet of silt a year, will extend the life of the Hoover Project 500 years, but what I want someone to tell me is, "Why should they

be built with Upper Colorado Basin Funds at the water expense of the State of Colorado?"

There is only one route remaining for us to take. We must put our water to beneficial use in our own state if we are to gain any right to it. That is the plain language of the Seven State Compact. It states that condition without equivocation. The Reclamation Bureau has explored 42 reservoir sites high up on the Colorado River System in Colorado. We cannot, we dare not settle for less than their authorization now. Congressional authorization does not mean immediate construction, but it will give to these proposed reservoir sites an official priority. Colorado contributes 72 per cent of the water of the Upper Colorado River Basin. Is it asking too much that we be allowed to use less than one-fourth of what we produce? If that is wrong, then I am wrong.

ED C. JOHNSON